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(2025) 9 ILRA 6
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 8841 of 2023

Union Of India ...Petitioner
Versus
M/s. Bhullar Construction Company & Ors. ...Respondents

Counsel for the Petitioner:
Sri Harish Chandra Dubey, Sri Rajesh Tripathi

Counsel for the Respondents:
Sri Bharat Bhushan Paul, Sri Salil Kumar Rai, Sri Saurabh Paul

Issue for Consideration
Whether there is any impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other?

Head Notes
The Constitution of India,1950-Article 227; The Arbitration and Conciliation Act, 1996-Section 37-There is no impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other subject to limitation and court fees as the case may be-Permission given the petitioner to convert the petition under Article 227 into an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and grant him three weeks time to do so.

Held-There is no impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other subject to limitation and court fees as the case may be. (E-15) **(Para 9)**

Case Law Cited
Matter Under Article 227 No. 4762 of 2024 (U.P. Awas Vikas Parishad through Housing Commissioner, Lucknow and others Vs. M/S Universal Contractors and Engineers Ltd.) decided on 3.10.2024; Ram Mohan Lal Brij Bhushan Lal Vs. Union of India reported in 1980 SCC Online All 319 : (1980) 6 ALR 573; Vishesh Kumar Vs. Shanti Prasad reported in 1980 All. CJ 233; Kailash Chandra Vs. Ram Naresh Gupta reported in 1982 All. CJ 608; R. Rajagopal @ R.R. Gopal and another Vs. State of T.N. and others reported in AIR 1995 SC 264;

List of Acts
The Constitution of India,1950; The Arbitration and Conciliation Act, 1996

List of Keywords
No impediment; Petition under Article 227 converted into an appeal; Proceeding is not maintainable; Different kind of proceeding lies.

Case Arising From
Order dated 25.3.2010 passed by the District Judge Agra in Misc. Case No.454 of 2002 (Union of India Vs. M/S Bhular Construction Company) by which objections filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 27.5.2002 given by sole arbitrator has been rejected.

Appearances for Parties
Counsel for Petitioner(s) : Harish Chandra Dubey, Rajesh Tripathi
Counsel for Respondent(s) : Bharat Bhushan Paul, Salil Kumar Rai, Saurabh Paul

(Delivered by Hon'ble Manish Kumar Nigam, J.)

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

2. This petition has been filed challenging the order dated 25.3.2010 passed by the District Judge Agra in Misc.

Case No.454 of 2002 (Union of India Vs. M/S Bhular Construction Company) by which objections filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 27.5.2002 given by sole arbitrator has been rejected. Initially, this petition was filed under Article 226 of the Constitution of India being Writ C No.37880 of 2010. This court by order dated 3.7.2010 issued notices thereafter, it appears that the case was listed on 22.10.2021 wherein the counsel for respondent no.1 raised an objection with regard to maintainability of the petition under Article 226 of the Constitution of India. Later on, an amendment application was filed by counsel for the petitioner for converting this petition to a petition under Article 227 of Constitution of India. The said application was allowed by this Court by the order dated 21.7.2022 and the petition has been converted in a petition under Article 227 of the Constitution of India. When the matter was taken up, an objection was raised by learned counsel for the respondents that against an order passed under Section 34 of the Arbitration and Conciliation Act, rejecting or allowing the objections filed against the arbitral award, an appeal lies under Section 37 of the Arbitration and Conciliation Act, and therefore, this petition cannot be entertained even under Article 227 of the Constitution of India.

3. Learned counsel for the petitioner relied upon a case being **Matter Under Article 227 No. 4762 of 2024 (U.P. Awas Vikas Parishad through Housing Commissioner, Lucknow and others Vs. M/S Universal Contractors and Engineers Ltd.)** decided on 3.10.2024 wherein, this Court has taken a view that a petition filed under Article 227 of the Constitution of India challenging the order passed by the Arbitral Tribunal cannot be entertained.

4. It has been submitted by learned counsel for the respondents that since the petitioner has statutory alternative remedy under Section 37 of the Arbitration and Conciliation Act, 1996 this petition may not be entertained.

5. Confronted with the arguments raised by learned counsel for the respondents, learned counsel for the petitioner submitted that it is correct that petitioner has a remedy of filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 but further submitted that since the petition has been entertained by this Court therefore he may be permitted to convert this petition into an appeal filed under Section 37 of the Act as the jurisdiction to entertain an appeal is also with the High Court.

6. Learned counsel for the respondents further submitted that such a permission cannot be granted and the proper course for the petitioner is to withdraw this petition and file an appeal wherein he may seek for condonation of delay in filing the appeal taking recourse under Section 5 read with Section 14 of the Limitation Act. Learned counsel for the respondents in this regard relied upon a judgment of this Court in case of **Ram Mohan Lal Brij Bhushan Lal Vs. Union of India** reported in **1980 SCC Online All 319 : (1980) 6 ALR 573** wherein relying upon a Supreme Court judgment in case of **Vishesh Kumar Vs. Shanti Prasad** reported in **1980 All. CJ 233,** this Court has rejected the prayer for permission to convert the revision into the writ petition.

7. This Court in case of **Kailash Chandra Vs. Ram Naresh Gupta** reported in **1982 All. CJ 608** held that conversion of a revision into writ petition under Article 226/227 is permissible. The judgment in case of Vishesh Kumar (supra) was distinguished by this Court. Paragraph Nos.3, 4, 5, 6, 7, 8, 9 and 10 of judgment in case of Kailash Chandra Vs. Ram Naresh Gupta (supra) are quoted as under:

3. Counsel for the opposite party however, urged that this cannot be done, as revision and a writ petition are distinct proceedings. In support of this contention he has relied upon the obrervations of the Supreme Court in Vishesh Kumar's case, which are to the following effect :-

"It has been urged by the appellant in Vishesh Kumar v. Shanti Prasad (Civil Appeal No. 2844 of 1979 : 1980 All. CJ 233) that in case the court is of the opinion that a revision petition under section 115, Code of Civil Procedure, is not maintainable, the case should be remitted to the High Court for consideration as a petition under Article 227 of the a Constitution. We are unable to accept that prayer. A revision petition under section 115 is a separate and distinct proceedings from petition under Article 227 of the Constitution, and one cannot be identified with the other. I will consider the impact of these observations a little later, trom I am of the view that the question as to whether a revision can be converted into writ petition was not canvassed before the Supreme Court in Vishesh Kumar's case, and these observations do not lay down any such proposition.

4. To begin with, it will be convenient to consider as to whether it is possible to convert a revision into a writ petition under Article 226/227 of the Constitution of India.

5. There is preponderance of judicial opinion that this can be done. In Naqshe Ali v. U. P. Sunni Central Waqf Board (1970 ALJ 815) , a revision had been filed against the order of the Civil Judge, constituted as a Tribunal under section 10 of the U. P. Muslim Waqfs Act, and the question arose as to whether a revision under section 115 of the C. P. C. lay against his order. It was held that no revision was maintainable against any order of the said Tribunal K. B. Asthana, J., as he then was, however, held that although a revision against the order of the Tribunal was not maintainable under section 115 of the C. P. C., powers under Article 227 of the Constitution can be exercised for quashing the order of the Tribunal. This is what he said:-

"Here I may dispose of an argument raised on behalf of the opposite party that I ought not to exercise my powers under Article 227 of Constitution as according to the Rules of the court, the application under Article 227 will not be in order, the procedure for its admission by a Bench of the judges having not been complied with. I do not think there is any substance in this ultra technical objection. The question that I am considering is of the exercise of power of this court under Article 227 of the Constitution. The Rules of the court permit a single judge of this court to give the necessary final directing under Article 227 of the Constitution. The learned counsel for the opposite party was not able to point out any prejudice being caused to the opposite party. The whole record is here and all the material on which the decision will turn is before the court. In these circumstances the filing of

affidavits by the parties can be dispensed with without causing any hardship of prejudice to any of the parties.

6. My lord the Chief Justice in the case of Kirat Singh and another v. Madho Singh and others (19 9 AWC 296) exercised powers under Article 227 of the Constitution in a case where a revision was filed. Similarly in Smt. Abida Begam and others v. Rent Control & Eviction Officer, LucLuow (AIR 1958 Allahabad 675) a Division Bench exercised powers under Article 226 of the Constitution in special Appeal filed against the decision of a single judge, see page 681 of the report.

7. In Smt. Deepika Alizabath Couto v. Babriel Anthony Couto (AIR 1978 All. 27: 1978 All CJ 57 FB), an objection under section of the Divorce Act of 1869 was filed in this court for confirmation of the decree of dissolution of marriage passed by the District Judge under section 10 of the Act. The petition was held to be not maintainable; but never the less the court exercised powers under Article 227 of the Constitution and quashed the order.

8. That the courts have treated revision as appeals or permitted them to be converted into appeal is amply illustrated by the decisions in Bhori v. Vidya Ram (AIR 1978 All. 299: 1978 All. CJ 186), Akkanagamma and others v. R. Nagesworiah and another (AIR 1968 Mysore 226).

9. The conversion of one proceedings into another viz., an appeal into a revision has been approved by the Supreme Court in the Raliable Water Supply Service of India (Pvt.) Ltd. v. The Union of India and others (AIR 1971 Supreme Court 2083). These cases clearly establish that the power of converting a particular proceeding into another, exists in the Court. The principle appears to be founded on the consideration that when a cause is before the court and justice requires that the matter be decided finally, matters of procedure and technicalities should not be allowed to stand in the way of dispensation of justice. The conversion can also be justified on the principle of avoiding multiplicity of proceedings.

10. The decision in Phul Kumart v. State and another (AIR 1957 All. 495) does not strike a different note, for all that the case lays down is that a revision cannot be treated as an application under Article 227 of the Constitution of India. Now, the request for treating a revision as a petition under Article 226 of the Constitution of India, in my view is entirely different from a request for converting a revision into a petition under Article 227 of the Constitution. The reasons being that in one case the applicant wants, without any further do, that his application under section 115 of the C. P. C. should be treated as a petition under Article 226/ 227 of the Constitution, while in the other he wants to take further steps, viz., by paying the necessary court fee filing necessary affidavits etc., so as to comply with the Rules of the court relating to petitions under Article 226/ 227 of the Constitution of India, so that the revision is substituted by a proper petition under Article 226/227 of the Constitution. In the first case the request cannot obviously be allowed, for the revision petition would not comply with the formalities, of a petition under Article 226/ 227 of the Constitution, while in the other case after conversion is effected it would so. The observations of the Supreme Court relied upon by the counsel for the opposite party only negatived the first

approach, viz., request for treating a revision as a petition under Article 226/227 of the Constitution. The Supreme Court while refusing such a request cannot be taken to have dissented from the established practice of the courts permitting conversion of one particular type of proceeding into another. I think, that while interpreting this decision of the Supreme Court, one should keep in mind the principle that unless a decision clearly intents so, it should not be read as up setting the law declared and the procedure followed by High Courts for a long number of years.

8. In case of **R. Rajagopal @ R.R. Gopal and another Vs. State of T.N. and others** reported in **AIR 1995 SC 264** in paragraph No.27, the Hon'ble Supreme Court held as under :

27. Lastly, we must deal with the objection raised by the respondent as to the maintainability of the present writ petition. It is submitted that having filed a writ petition for similar reliefs in the Madras High Court, which was dismissed as not maintainable under a considered order, the petitioners could not have approached this Court under Article 32 of the Constitution. The petitioners, however, did disclose the above fact but they stated that on the date of their filing the writ petition, no orders were pronounced by the Madras High Court. It appears that the writ petition was filed at about the time the learned single Judge of the Madras High Court pronounced the orders on the office objections. Having regard to the facts and circumstances of the case, we are not inclined to throw out the writ petition on the said ground. The present writ petition can also be and is hereby treated as a Special Leave Petition against the orders of the learned single Judge of the High Court.

9. In view of the case law discussed above, I am of the opinion that there is no impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other subject to limitation and court fees as the case may be. Thus, following the earlier decisions of this Court as well as of the Supreme Court and the established practice of permitting one particular type of proceedings to be converted into another, I permit the petitioner to convert this petition under Article 227 into an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and grant him three weeks time to do so.

10. After conversion, this petition be listed before appropriate Bench having jurisdiction in the matter.

(2025) 9 ILRA 10
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.09.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 528 BNSS No. 902 of 2025

Ravindra Kumar ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Pranjal Jain, Nitin Mathur, Purnendu Chakravarty

Counsel for the Opposite Party:
G.A.

Issue for consideration

Preliminary Objection as to maintainability of Application u/s 528 BNSS-

Headnotes

Default bail-Default bail application filed-rejected-impugned- on account of non-filing of complaint within ninety days-from the date of arrest-allegation against applicant being an employee of Ordnance Factory-was sharing confidential information and documents through WhatsApp to an agent of Pakistan-preliminary objection-Section 21(4) of the Act 2008-appeal shall lie to the High Court against an order of the Special Court granting or refusing bail-notwithstanding contained in Section 378 (3) Cr.P.C.- no otherwise definition can be given against the intent of the legislature. Application not maintainable-**dismissed.**

Held, apparent from the provision of Section 21(4) of the Act 2008 that an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail, notwithstanding contained in Sub Section (3) of Section 378 of the Cr.P.C. This provision is overt in its mandate and while applying this provision in the present case, it is apparent that this does not speak regarding any difference of any kind of refusing or granting bail, meaning thereby that if the Special Court (NIA) grants or refuses the bail, the same is amenable to the provisions of the appeal, prescribed under Section 21 of the Act 2008 and, therefore, in presence of the obvious provisions, no otherwise definition can be given against the intent of the legislature. (E-9)

Case Law Cited

1. Harendra Vs. State of U.P. and another reported in 2020 SCC OnLine All 850
2. Madhu Limaye Vs. the State of Maharashtra, reported in NA528 No. 908 of 2025 4 (1977) 4 SCC 551
3. Amar Nath and others Vs. State of Haryana and another, reported in (1977) 4 SCC 137
4. V.C. Shukla Vs. State reported in 1980 Supp SCC 92

Appearances of parties

Counsel for Applicant(s) : Pranjal Jain, Nitin Mathur, Purnendu Chakravarty
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Sri Purnendu Chakravarty, learned counsel assisted by Ms. Aishwarya Saxena, Mr. Pranajal Jain and Mr. Rohit Kanaujia, learned counsels for the applicant and Sri Shiv Nath Tilhari, learned counsel for the State of U.P.

2. Present application is directed against the order dated 7.7.2025 passed by learned Additional Sessions Judge, Court No.3/Special Judge/NIA, Lucknow whereby the default bail application on account of non-filing of complaint, within ninety days, from the date of arrest, has been rejected.

3. At the very outset, a preliminary objection has been taken by Sri Shiv Nath Tilhari, learned counsel appearing for the State that the F.I.R. No.1/2025 dated 13.3.2025 was registered under Section 148 BNS and Section 3/4/5 of the Official Secrets Act, 2023 (hereinafter referred to as 'the Act 2023'), against the applicant, while alleging that the applicant being an employee of Ordnance Factory, Kanpur, was sharing confidential information and documents through WhatsApp to one Neha Sharma who is said to be an agent of Pakistan, compromising the safety and interest of the Country. He submits that the schedule as prescribed under the National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act 2008') reveals that Chapter VI of the Indian Penal Code [Sections 121 to 130 (both inclusive)] are find mention and, therefore, this is amenable to the jurisdiction of Special Court designated/constituted under the scheme of the Act 2008 read with the Rules 2008 made thereunder. He submits that Section 121A of I.P.C. corresponds to

Section 148 in Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'the BNS'). He further submits that the order impugned dated 7.7.2025 has admittedly been passed by the Special Court (NIA) wherein default bail application has been rejected. He argued that any order passed by the Special Court (NIA) is appealable as per the provisions given under Section 21 of the Act 2008.

4. For ready reference, Section 21 of the Act 2008 is reproduced hereinunder:-

"21. Appeals. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

5. Referring to Sub Section (4) of Section 21, he submits that an appeal shall lie to the High Court, against an order of the Special Court, granting or refusing bail and in the present case, the default bail application has been rejected, thus, he submits that the order impugned dated 7.7.2025 passed by the Special Court (NIA) is appealable under the provision of Act 2008 and therefore, being an efficacious and alternative statutory remedy available to the applicant, the present application under Section 482 Cr.P.C. is not maintainable, as such, this application may be dismissed on this ground alone.

6. Per contra, learned counsel for the applicant has opposed the contention aforesaid and submits that Section 167(2) Cr.P.C. (corresponding to Section 187(3) BNS, 2023) is a statutory provision which confers indefeasible right upon accused to be released on bail, on non-filing of charge sheet, within the prescribed time period whereas Section 439 Cr.P.C./Section 483 Bharatiya Nyaya Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS') is regular bail procedure and is wholly discretionary in nature. He also submits that Sub Section (1) (2) of Section 21 of Act 2008 provides right to appeal against the Judgment, sentence or order, not being an interlocutory order. Further submitted that Section 21(3) of the Act provides an

exclusion clause, restricting appeals against interlocutory orders and Section 21(4) of the Act 2008 prescribes the right to appeal against an order granting or refusing bail which is to be construed with reference to Section 439 Cr.P.C./483 BNSS and does not apply to Section 167 (2) Cr.P.C./187(3) of BNSS 2023.

7. In support of his contention, he has placed reliance on a Judgement of this Court in the case of **Harendra Vs. State of U.P. and another** reported in **2020 SCC OnLine All 850** and has referred to para 13, which reads as under:-

"13. Thus, on the facts of the case that the applications for default bail were filed prior to the filing of the charge-sheet and following the law as laid down by the Supreme Court in the case of Union of India Through General Bureau of Investigation v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav (Supra), I am of the view that the applicants were entitled to be enlarged on statutory bail and non-grant of statutory bail and the rejection of the application for grant of statutory bail was wholly untenable in law."

8. He also argued that non-filing of charge sheet within the prescribed time, mandates release of an accused under statutory remedy of default bail and such release is a deemed release under Chapter XXXIII of Cr.P.C., however, order for the bail can be cancelled under Section 439 (2) of Cr.P.C. which is subject to cancellation and, therefore, any order which is subject to cancellation, withdrawal or recession, would not be a final order. He also added that test of finality has to be seen in terms of Sub Section (2) which bars alteration or review of Judgment or final judgement except of clerical or arithmetical errors and since this Court possesses inherent power to give effect to any order under this Code empowers it to give effect to Section 167 (2) of Cr.P.C. while directing the release of an accused on statutory bail.

9. Concluding his arguments, he submits that the order passed under Section 167(2) Cr.P.C./187(3) BNSS is not passed, on the merits of this case, thus, the same cananot be treated as a final order. and, therefore, the instant application under Section 482 Cr.P.C./582 of BNSS is maintainable and, therefore, the preliminary objection may be rejected.

10. Having heard learned counsel for the parties and after perusal of the record, it transpires that at the very inception, the preliminary objection has been raised by the counsel appearing for the State, on the premises of Section 21 of the Act 2008, while submitting that the appeal is maintainable against any order passed by the Special Court constituted/designated under the provisions of Act 2008.

11. By way of the present application, the order passed under Section 187(3) of BNSS whereby the default bail has been rejected, is under challenge. The provision prescribed under Section 187(3) of BNSS contains the 'statutory bail', which in fact identifies the indefeasible right given to the accused person. In fact, the right of default bail can be exercised once and not likewise the other provision of bail as prescribed under Section 439 of the Cr.P.C. where at the subsequent stage ,more bail applications can be instituted, in form of second, third and fourth bail application and so on.

12. The provision of statutory bail under Section 187(3) BNSS/167(2) Cr.P.C.

is whether an interlocutory order or a final order. The test which could be applied, for an order, being interlocutory, intermediary or final, can be summarized in two folds; firstly that any such order, which substantially affects the right of the accused or parties, cannot be termed as an interlocutory order and secondly, any right, which accrue out of some statutory provisions, is also not an interlocutory order. Time and again, this issue has exhaustively been dealt with by the Apex Court starting from a three Judge Bench decision of the Hon'ble Apex Court in the case of **Madhu Limaye Vs. the State of Maharashtra, reported in (1977) 4 SCC 551** wherein the ratio drawn in the case of **Amar Nath and others Vs. State of Haryana and another,** reported in **(1977) 4 SCC 137** has partly been affirmed, holding that the term 'interlocutory order' as is used in Section 397 of the Cr.P.C. does not invariably mean the converse of the term of 'final order' and certain guidelines were provided to examine that a particular order is not an 'interlocutory order'.

13. Subsequently, the Apex Court in the case of **V.C. Shukla Vs. State** reported in **1980 Supp SCC 92,** considering the ratio drawn in Amar Nath **(supra)** and Madhu Limaye **(supra)**, has held that the intermediate, quasi final and final orders are revisable. In this view, the provision of statutory bail under Section 187(3) of BNSS is an intermediary order and the same is revisable, subject to any other provision provided in a special Act.

14. Coming to the crux of the issue of maintainability, it is apparent from the provision of Section 21(4) of the Act 2008 that an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail, notwithstanding contained in Sub Section (3) of Section 378 of the Cr.P.C. This provision is overt in its mandate and while applying this provision in the present case, it is apparent that this does not speak regarding any difference of any kind of refusing or granting bail, meaning thereby that if the Special Court (NIA) grants or refuses the bail, the same is amenable to the provisions of the appeal, prescribed under Section 21 of the Act 2008 and, therefore, in presence of the obvious provisions, no otherwise definition can be given against the intent of the legislature. This Court is also aware of the trite law that a thing should be done in the manner prescribed under the statute, not otherwise. Admittedly, vide order dated 7.7.2025, the learned Special Judge (NIA) has rejected the default bail application of the applicant. Thus, against such order the remedy of appeal is provided under the Special Act, i.e., Act 2008.

15. Further this Court also noticed that the law referred by counsel for the applicant, which is rendered in case of Harendra Vs. State of U.P. and another **(supra),** is on different factual matrix and this will not apply to the facts and circumstances of the present case as the dispute in question in the above-said case was regarding completion of ninety days as the charge sheet was dispatched on the same day when the application for default bail was moved, therefore, this will not cover the field of the issue in the instant matter.

16. Ergo, this Court is of the considered opinion that the instant application challenging the order dated 7.7.2025 passed by the Special Court (NIA) is not maintainable, thus, preliminary objection taken by counsel for the State; sustains.

17. The present application is hereby **dismissed** as not maintainable.

18. However, it is open to the applicant to pursue the appropriate remedy, provided under law.

19. Consigned to the records.

(2025) 9 ILRA 15
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.09.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 6653 of 2025

Sanoj Kumar Yadav ...Applicant
Versus
State Of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Satyendra Kumar Tiwari, Rajesh Pandey

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Matter pertains to - (i) Whether the charges can be altered on an application moved by either of the parties; and (ii) At the stage of framing of charges, what material is to be looked into by the trial court.

Headnotes

Indian Penal Code, 1860 – SS. 323, 324, 342, 504, 506 r.w. S. 34 and S. 120-B, 307 & 302 - Criminal Procedure Code, 1973 – S. 216 - Alteration of charge - Power to alter or add any charge before judgment lies exclusively with the Court; such power may be exercised suo motu or on an application moved by parties, but not as a matter of right - Alteration of charge - Nature of power - Exclusive domain of the trial court; parties cannot claim alteration as of right - Framing of charges - Scope of enquiry - At the stage of framing charges, only prima facie case to be seen; mini trial not permissible; sufficiency of grounds to proceed to be determined on materials placed before the court.

Held: The power under S. 216 Cr.P.C. is the exclusive domain of the court - no party can seek alteration of charge as of right - At the stage of framing charges, the trial court is only required to determine whether a prima facie case is made out - Mini trial not permissible - Impugned order dated 03.07.2025 passe Impugned order dated 03.07.2025 passed by Sessions Judge, Sultanpur, examined the entire record and found appropriate grounds for alteration of charges - No illegality or infirmity found - Application dismissed - Trial court directed to proceed in accordance with law - High Court found no illegality or infirmity in the impugned order of Sessions Judge. (paras 12,13,14,15,16,17,18,19,20) (E-7)

Case Law Cited

Directorate of Revenue Intelligence v. Raj Kumar Arora & Ors., **2025 SCC OnLine SC 819**; *State of Rajasthan v. Ashok Kumar Kashyap*, **(2021) 11 SCC 191**; P*. Vijayan v. State of Kerala*, **(2010) 2 SCC 398;** *State of Karnataka v. M.R. Hiremath*, **(2019) 7 SCC 515;** *State of T.N. v. N. Suresh Rajan*, **(2014) 11 SCC 709;** *Radhey Lal v. State of U.P. & Anr.*, **Criminal Appeal No. 1014 of 2025.**

List of Acts

Code of Criminal Procedure, 1973; Bharatiya Nyaya Sanhita, 2023; Indian Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Alteration of charge; Framing of charges; Prima facie case; Mini trial; Exclusive domain; Suo motu power; No right to alteration; Judicial discretion; Charge modification; Criminal trial.

Case Arising From

Order dated 03.07.2025 passed by Sessions Judge, Sultanpur, in Sessions Trial No. 208 of 2024 (arising out of Case Crime No. 363 of 2023, P.S. Motigarpur, District Sultanpur).

Appearances for Parties

Advs. for the Applicant:
Mr. Satyendra Kumar Tiwari, Mr. Rajesh Pandey

Advs. for the Respondents:
Mr. Anirudh Kumar Singh, A.G.A.-I; Mr. Sushil Kumar Pandey; Mr. Nirmal Kumar Pandey, A.G.A.s

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Satyendra Kumar Tewari and Mr. Rajesh Pandey, learned counsels for the applicant, Mr. Anirudh Kumar Singh, learned A.G.A.-I, Mr. Sushil Kumar Pandey and Mr. Nirmal Kumar Pandey, learned A.G.A.'s appearing for the State.

2. The instant application filed under section 482 Cr.P.C./528 of the B.N.S.S.,2023, is directed against the order dated 03-07-2025, passed by the learned Sessions Judge, Sultanpur, in Sessions Trial No. 208 of 2024, arising out of Case Crime No. 363 of 2023, under sections 323, 324, 342, 504, 506 readwith section 34 and section 120-B, 307 and 302 of I.P.C. whereby, the learned Sessions Judge has altered the charge u/s 302 I.P.C. to u/s 304 of I.P.C. and u/s 307 I.P.C. to u/s 308 I.P.C., thus the charges are framed under sections 323/34,342/34, 308/34,304/34,504,506,120-B of I.P.C.

3. The briefly stated facts are that the opposite parties no. 2 to 4 had an old enmity with the applicant, therefore, on 20-11-2023, in the morning, when the nephews of applicant namely, Vikas Yadav and Amit Yadav, were going for natural call, the opposite parties no. 2 to 4 tried to crush them by a vehicle namely, Bolero and when, an alarm was raised, the accused persons came out from their vehicle and started beating both the injured, with 'Lathi-Danda' and with sharp edged weapons and when the passersby intervened, the opposite parties no. 2 to 4 ran away from the place of occurrence. In the said incident, both the injured persons received serious injuries and they were taken to the hospital at Sultanpur, thereafter, they were referred to Trauma Centre, Lucknow. During the treatment, one of the nephew of the applicant namely, Amit Yadav died on 21-11-2023 and an information regarding his death was given at the police station on 22-11-2023.

4. The first information report bearing Case Crime No. 0363 of 2023, was initially lodged under sections 323, 324, 342, 504 & 506 of I.P.C. at Police Station-Motigarpur, District-Sultanpur and after the death of one of the injured, sections 302 & 307 of I.P.C. were added.

5. The post-mortem report, which was conducted at government hospital,Lucknow, finds mention of five injuries over the body of the deceased. The case was committed for trial before the learned Sessions Judge, Sultanpur and thereafter, an application under section 216 of Cr.P.C. for altering the charges was moved on behalf of the opposite parties no. 2 to 4, on 16-05-2024, whereafter, the applicant filed objection, on 21-05-2024 and the learned trial court vide order dated 17-01-2025, allowed the application under section 216 of Cr.P.C. moved by the accused persons and altered the charges from sections 302 & 307 of I.P.C. to sections 304 & 308 of I.P.C., respectively.

6. Being aggrieved with the order dated 17-01-2025, passed by the learned Sessions Judge, Sultanpur, the applicant moved an application under section 482 Cr.P.C./528 of B.N.S.S.,2023 bearing no. 2533 of 2025, wherein this court passed an order on 18-04-2025. This court vide aforesaid order, quashed the order dated 17.1.2025 and the learned trial court was

given liberty to pass appropriate order keeping in view the provisions contained in Section 216 of Cr.P.C., on it's own instance, and also keeping in view the observations made in the order, after affording opportunity of hearing to all concerned.

7. After the aforesaid order was passed, the applicant again approached the learned trial court while moving an application with order dated 18-04-2025,wherein the order impugned dated 03-07-2025 is passed by the learned Sessions Judge, Sultanpur.

8. Having at a glace of the order impugned, it is apparent that the learned Sessions Judge, has observed that though the application No. 8-B, under section 216 of Cr.P.C. was moved on behalf of the opposite parties no. 2 to 4, but, when the objection was raised on it's admissibility, orally, the application was not pressed and after noting the oral admission for not pressing the application by the applicant, the order dated 17-01-2025 was passed, but, the same was concealed by the applicant while filing the application under section 482 Cr.P.C./528 of the B.N.S.S.,2023 bearing no. 2533 of 2025, before this court.

9. After recording the aforesaid facts, the trial court proceeded afresh, in the matter, in compliance of the directions made by this court, on 18-04-2025.

10. The questions cropped up before this court are in two folds :-

(1) That whether the charges can be altered on an application moved by either of the parties and secondly, at the stage of framing of charges, what material is to be looked into by the learned trial court.

11. When this court examines that whether on an application moved by either of the parties, charges could be altered or not, the content and intent of Section 216 of the Cr.P.C., is necessarily to be gone into. Section 216 of Cr.P.C. reads as under :-

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

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

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

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

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

which the altered or added charge is founded.

12. From a bare reading of the aforesaid provisions, it is abundantly clear that the court is empowered to alter the charge, which is apparent from the start wordings of the provision, which says that 'Any court may alter or add to any charge at any time before Judgment is pronounced' and further the aforesaid provision emphasizes from reading of the head-note (heading) of the provision, which says that the 'Court may alter charge'. The aforesaid provision is indicative of the intent of the legislature that there is no such provision that anyone other than the court, can have a right to alter the charge.

13. Time and again, this issue has been dealt with by the Hon'ble Apex Court and recently, reiterating the view earlier taken by it, this has been held in the case of Directorate of Revenue Intelligence Vs Raj Kumar Arora and Others, reported in 2025 SCC Online SC 819, in paragraph no. 144, as under :-

144. *The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.*

14. From the abovesaid ratio, it is abundantly clear that it has been a constant view of the Hon'ble Supreme Court that the court may alter or add any charge on it's own or on an application moved by the parties concerned, but, such powers can be invoked by the court suo-moto, meaning thereby that the power under section 216 of Cr.P.C. is exclusive to the wisdom of the court concerned and no party can claim the alteration in the charges, as a matter of right.

15. The Hon'ble Apex Court in the case of State of Rajasthan Vs Ashok Kumar Kashyap, reported in (2021) 11 Supreme Court Cases,191, has held in paragraph nos. 10,11 & 15 that at the stage of framing of the charges or rejecting the application of discharge, it is to be looked into that whether prima-facie, a case has been made out and whether the accused is required to be further tried or not, thus, the mini trial is not permitted. Paragraph nos. 10,11 & 15 of the Judgment are extracted as under :-

10. *By the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order, the High Court in exercise of its revisional jurisdiction has set aside the order passed by the learned Special Judge framing the charge against the accused under Section 7 of the PC Act and consequently has discharged the accused for the said offence. What has been weighed with the High Court while discharging the accused is stated in paras 10 and 11 of the impugned judgment [Ashok Kumar Kashyap v. State of*

Rajasthan, 2018 SCC OnLine Raj 3468] and order, which are reproduced hereinabove.

11.*While considering the legality of the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.*

11.1. *In P. Vijayan [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*

11.2. *In the recent decision of this Court in M.R. Hiremath [State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under : (SCC p. 526)*

"25. The High Court [M.R. Hiremath v.State, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v.N. SureshRajan[State of T.N.v.N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

'29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our

opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.' "

15. *As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."*

16. This court has also passed an order on 09.05.2025, in Criminal Appeal No. 1014 of 2025, in the case of Radhey Lal Vs State of U.P. and Another, wherein paragraph no. 24, it has been held that the claim for alteration in the charge, cannot be raised as a matter of right, though, the application can be moved for bringing the omission or error in framing of the charges before the learned trial court, but, it is the exclusive domain of the learned trial court to alter the charges.

17. Applying the aforesaid ratio to the case in hand, it apt to say that the impugned order dated 03-07-2025, reveals that the learned trial court has gone into the records of the case i.e. the Chargesheet, Chik F.I.R., Tahrir, Injury Report, Inquest Report including the post-mortem report, Site plan and Case Diary etc. The nature of injuries which are reported in the post-mortem report has also been discussed and alongwith that, the first information report version has been co-related. Moreso, it is observed by the learned trial court in it's order dated 03-07-2025 that the application for alteration of charges moved by the applicant was not pressed orally and a note was also made for not pressing the same and there is no reason to disclose it, though the same was not disclosed by the applicant before the coordinate Bench of this court while challenging the order dated 17-01-2025, but, after noticing the aforesaid, the learned trial court proceeded in compliance of the order dated 18-04-2025 passed in application under section 482 Cr.P.C./528 of the B.N.S.S. No. 2533 of 2025 and while considering the material available on record, has passed the order, on 03-07-2025 and in this view of the matter, this court does not find any illegality or erroneousness in the order impugned dated 03-07-2025.

18. Coming to the next issue that while framing the charge, what material is to be looked into and discussed by the learned trial court, it is trite law on the issue that it is expected from a trial Judge to exercise his judicial mind to determine that as to whether a case for trial has been made out or not, and while undertaking such proceedings, the court is not supposed to hold a mini trial by marshalling the facts and evidence on record. Infact, if the material available before the court, gives subjective satisfaction of existence of prima-facie case of the alleged offence, it is sufficient enough to proceed with the case.

19. Ergo, this court is of the considered opinion that the order impugned dated 03-07-2025, does not assail any illegality or infirmity. Thus, there is no merit in this application and consequently, the application is hereby **dismissed**.

20. The trial court may proceed in accordance with law.

21. Consigned to record.

(2025) 9 ILRA 21
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Application U/S 528 BNSS No. 27620 of 2025

Mohammad Irasad ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Manoj Kumar Mishra, Rahul Mishra

Counsel for the Opposite Parties:
Aditya Prasad Mishra, G.A., Vijay Mishra

Issue for Consideration

Whether the proceedings under Sections 420 and 120-B I.P.C., arising out of a dispute that is "essentially of a civil nature", and where "nothing in the FIR or the prosecution papers" discloses deception or fraudulent inducement, amount to an "abuse of the process of law" so as to warrant quashing.

Headnotes

Indian Penal Code, 1860 - SS. 415, 420, 120-B - Cheating - Criminal Procedure - Application Under Section 528 BNNS - Quashing Of Proceedings - Where The Dispute Relates To Title, Authority Of Vendor, Earlier Sale Deeds, Entries In Revenue Records And Nature Of Property - Ingredients Not Made Out - FIR And Material Do Not Show Any "Representation Much Less A False Representation" Or "Fraudulent Or Dishonest Inducement" By Applicant - Informant Is Not Purchaser; Purchaser (Kajal) Is A Co-Accused - Civil Dispute Given Criminal Colour - Continuation Of Proceedings Where Allegations Disclose Only A Civil Dispute Constitutes "Abuse Of The Process Of Law" - Quashing Under Section 528 BNSS (482 Crpc).

Held: Matter is essentially of a civil nature - Opposite party No. 2 has wrongly invoked the jurisdiction - giving a criminal colour to a matter that is essentially civil - No material to show "any representation much less a false representation" or "fraudulent inducement" by the applicant; informant is not purchaser; purchaser herself is co-accused - Issues involved - title, authority, subsistence of land - are triable in a civil suit and not in a criminal prosecution - No case of cheating under S.420 IPC made out - prosecution is nothing but an abuse of the process of law - Application allowed - proceedings in Case and order quashed. (E-7)

Case Law Cited

V.Y. Jose and Anr. v. State of Gujarat and Anr., **AIR 2009 SC (Supp) 59;** *Hira Lal Hari Lal Bhagwati v. CBI,* **(2003) 5 SCC 257;** *Vir Prakash Sharma v. Anil Kumar Agarwal,* **(2007) 7 SCC 373;** *Md. Ibrahim and Ors. v. State of Bihar and Anr.,* **2010 AIR SCW 405;** *Dr. Vimla v. Delhi Administration,* **AIR 1963 SC 1572;** *State of U.P. v. Ranjit Singh,* **(1999) 2 SCC 617;** *Rajiv Thapar and Ors. v. Madan Lal Kapoor,* **AIR 2013 SC (Supp) 1056.**

List of Acts

Bharatiya Nagarik Suraksha Sanhita (BNSS),2023; Indian Penal Code, 1860; Criminal Procedure Code, 1973; Indian Contract Act, 1872.

List of Keywords

quashing further proceeding; sale deed; Power of Attorney; civil nature; fraudulent or dishonest intention; deception; abuse of the process of law; no legal right or authority; criminal colour; cheating; representation; inducement.

Case Arising From

Case No. 17927 of 2024 (State vs. Irasad and Others), arising out of Case Crime No. 64 of 2022, under Sections 420 and 120-B IPC, P.S. Civil Lines, District Meerut; and order dated 23.10.2024 of the Additional Chief Judicial Magistrate, Court No. 5, Meerut.

Appearances for Parties

Advs. for the Applicant:

Sri Manoj Kumar Mishra, Sri Rahul Mishra.

Advs. for the Respondents:

Sri Aditya Prasad Mishra, G.A., Sri Vijay Mishra.

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.

2. Heard Sri Manoj Kumar Mishra, learned counsel for the applicant, Sri Aditya Prasad Mishra, learned counsel for the opposite party No.2 and learned A.G.A. for the State.

3. The pleadings have already been exchanged between the parties.

4. The instant application under Section 528 BNSS has been filed by the applicant for quashing further proceeding of Case No.17927 of 2024 (State vs. Irasad and Others), arising out of Case Crime No.64 of 2022, under Sections 420 and 120 B I.P.C., Police Station Civil Lines, District Meerut as well as order dated 23.10.2024 passed by the learned Additional Chief Judicial Magistrate, Court No.5, Meerut.

5. Learned counsel for the applicant submits that according to the prosecution version, the informant, Shahid Ali, lodged an FIR against the applicant and six others at Police Station Civil Lines, District Meerut, on 23.02.2022 with the allegation that the disputed plot, i.e., Khasra No. 6293/1, area 1142.61 square meters @ 1366.57 square yards is situated in Village Shergadhi, Sai Colony, Tehsil and District Meerut. It is further alleged that the said plot was owned by Kanwar, Bhawar Singh, Bijendra Singh, Satendra Singh, Indraj Singh and others. Aase and others executed a sale deed for 1366.57 square yards of land from Khasra No. 6293/1 in favour of Siyaram Kasturi Devi Educational Society, Meerut, through its Secretary, Sudheer Sharma, on 30.05.2005. The sale deed further records that, after the previous transactions, 1366.57 square yards of land had remained with the vendors. Aase and others had created a society, namely, Anusuchit Jati Grah Nirman Sahkari Samiti Ltd. A sale deed was executed by Audesh Kumar as President of the said society, and the sale deed also bore the signatures of all the members of the Samiti. The said deed was duly registered on 30.05.2005, and possession of the sold land was handed over to the purchasers. Subsequently, the said land was purchased by the informant, applicant Mohammad Irasad, and others on 15.03.2018 from Siyaram Kasturi Devi Educational Society. At present, the said land is in the form of Abadi (residential area). On 28.03.2018, the purchasers executed a Power of Attorney in favour of the informant, which was duly registered before the Sub-Registrar. The accused persons were well aware of the said Power of Attorney. The informant executed several sale deeds and power of attorney in respect of the property purchased by the executors of the power of attorney holder. However, on 14.06.2019, Bijendra (son of Aase) and Nand Kishor had executed a sale deed for 180 square yards in favour of Irshad, Amit Sharma, and Lakshya Sharma without any authority. Bijendra and Nand Kishor had no right in the said property. On the basis of the sale deed dated 14.06.2019,

the applicant executed a sale deed on 23.10.2020 in favour of Kajal, transferring 90 square yards (75.24 square meters) of the said property, without any legal right or authority. Both sale deeds dated 14.06.2019 and 23.10.2020 were executed without any legal authority. On the basis of said sale deeds, the accused persons, namely Mohd. Irshad, Kajal, Bijendra and others, are threatening the informant. The applicant is a land grabber, and an FIR has been lodged against him under Sections 420, 467, 468, 471 and 120-B IPC. However, after investigation, the police submitted a charge-sheet against the applicant under Sections 420 and 120-B of the IPC, and thereafter, the applicant was summoned by the court below on 23.10.2024 on the basis of the said charge-sheet.

6. Learned counsel for the applicant further submits that no case under Section 420 I.P.C. is made out against the applicant, as there is no allegation that he made any representation or played any deception upon the informant while purchasing the land from Bijendra and others or while selling the same to Kajal. If any cloud has been created on the title of Kajal with respect to the property purchased by her from the applicant, she ought to have approached the law enforcement agency to raise her grievance. He next submits that, in the rejoinder affidavit, an extract of the Khatauni for Fasli years 1429?1434 (from 01.07.2021 to 30.06.2027) has been annexed. In this extract, *Khasra* No. 6293/1m, area 0.3100 hectare is equivalent to a total area of 1366.57 square yards is recorded in the name of Aase, son of Govind. Out of the said 0.3100 hectare of land, the applicant had purchased 90 square yards from Bijendra, son of Aase, and subsequently transferred the same to Kajal. It is further submitted that both Aase and Bijendra had died over the course of time. He next submits that a civil suit was filed by the informant in respect of the said dispute, which was withdrawn with liberty to file afresh. He also submits that the dispute is essentially of civil nature, and criminal prosecution in respect of the said matter amounts to a gross misuse of the process of law. Therefore, the impugned charge-sheet as well as the summoning order are liable to be quashed.

7. Per contra, learned counsel for opposite party no. 2 submits that the applicant has criminal history, which has been disclosed in the counter-affidavit. Two criminal cases have been registered against the applicant i.e. Case Crime No. 114 of 2020, Police Station Lisadi Gate, District Meerut, under Sections 270, 269, and 188 I.P.C., at the instance of S.I. Ajay Sharma during the COVID period and Case Crime No. 346 of 2024, under Section 318(4) BNS, registered on 20.12.2024 at the instance of Birendra Kumar pursuant to the orders of the learned Magistrate. In this case, the informant has alleged that the accused, Irshad Ali, took Rs. 13,00,000 from him by practicing deception and fraud, and with the said amount, purchased a plot in his own name.

8. In reply to the criminal history alleged on behalf of opposite party no. 2, learned counsel for the applicant submits that the first case was lodged against the applicant for violation of COVID-19 guidelines, which has been withdrawn by the Government, and the second case was still under investigation at the time of filing the present petition, so its details were not available. However, both criminal cases have been duly explained in the rejoinder affidavit.

9. Learned counsel for opposite party No. 2 submits that the applicant is one of the persons who executed a power of attorney in favour of the informant. Once the applicant had executed the power of attorney, he was not entitled to execute a sale deed in favour of Kajal for land that was neither available nor in existence. After the sale deed dated 30.05.2005 executed by the society in favour of Siyaram Kasturi Devi Educational Society, no land remained with the vendors. Consequently, the subsequent sale deed executed by Bijendra in favour of the applicant, as well as the sale deed executed by the applicant in favour of Kajal, are fraudulent and devoid of any authority or legal right. Due to such sale deeds, the informant has suffered difficulty, as he had already sold several chunks of the said plot to other persons, who are now seeking possession of the property purchased by them. He lastly after withdrawing the suit for cancellation of sale deed, due to some formal defects, informant has filed a fresh suit for cancellation of sale deed dated 14.06.2019.

10. Learned counsel for the applicant has placed reliance the judgment of Hon'ble Supreme Court in **V.Y. Jose and Anr vs. State of Gujarat And Anr reported in AIR 2009 SC (SUPP) 59,** wherein Hon'ble Court has considered the ingredients of offence of cheating as defined under Section 415 I.P.C. and observed that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out. The Hon'ble Court also observed that under Section 482 Cr.P.C., saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a persons should undergo a criminal trial despite the fact that no case has been made out at all. In **Hira Lal Hari Lal Bhagwati vs CBI; (2003) 5 SCC 257,** the Hon'ble Court has held that it is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed.

11. In another judgement, **Vir Prakash Sharma vs. Anil Kumar Agarwal; (2007) 7 SCC 373,** the Hon'ble Supreme Court held in para-13 that the ingredients of Section 420 of the Penal Code, which are as follows:-

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property;

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or

omit to do anything which he would not do or omit."

12. In another judgment relied upon by the learned counsel for the applicant in **Md. Ibrahim And Ors vs. State of Bihar And Anr; 2010 AIR SCW 405,** the Hon'ble Supreme Court held as under:-

"14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term `fraud' is not defined in the Code. The dictionary definition of `fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines `fraud' with reference to a party to a contract. In Dr. Vimla vs. Delhi Administration - AIR 1963 SC 1572, this Court explained the meaning of the expression `defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in State of UP vs. Ranjit Singh - 1999 (2) SCC 617: (1999 AIR SCW 863)"

13. In **Rajiv Thapar And Ors vs. Madan Lal Kapoor; AIR 2013 SC (SUPP) 1056,** the Hon'ble Supreme Court considered the ambit and scope of the exercise of powers under Section 482 Cr.P.C. In paragraph 23, the Court issued guidelines for invoking the power vested in the High Court under Section 482 Cr.P.C., which are reported as follows:

"23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

14. In the present case, the main allegation against the applicant is that he obtained a registered sale deed dated 14.06.2019 from Bijendra Singh for 90 square yards of land from Khasra No. 6293/1, and subsequently sold the said land to Smt. Kajal by means of another registered sale deed dated 30.10.2020. According to the informant, neither the vendor of the applicant, late Bijendra Singh, had any legal right or authority to sell the said land to the applicant, nor did the applicant derive any valid title under the sale deed executed by Bijendra Singh in his favour, as the land in question did not remain in the share of Bijendra Singh. It is further alleged that the applicant and the co-accused have taken benefit of the revenue records, in which the name of father of Bijendra Singh continued to appear. Since no legal title was conveyed to the applicant through the said sale deed, he had no right to transfer the land to Smt. Kajal through a registered sale deed.

15. Counsel for the applicant admitted that two civil suits were already filed for annulment of cancellation of sale deed executed by Bijendra Singh in favour of applicant and sale deed executed by applicant in favour of Smt. Kajal. Both the civil suits had dismissed as withdrawn, but new civil suits have been filed with permission of the Court. Counsel for the applicant admitted that two civil suits had already been filed seeking annulment and cancellation of the sale deed executed by Bijendra Singh in favour of the applicant and the sale deed executed by the applicant in favour of Smt. Kajal. Both civil suits have been dismissed as withdrawn and fresh civil suits have been filed with the permission of the Court.

16. Upon thoughtful consideration, and in light of the legal position laid down by the Hon'ble Supreme Court regarding the essential ingredients of the offence of cheating punishable under Section 420 I.P.C. and its application to the facts of the present case, as well as the scope of interference by this Court under Section 482 CrPC, this Court is of the considered opinion that the matter is essentially of a civil nature.

17. The opposite party No. 2 has wrongly invoked the jurisdiction of this Court under Section 482 CrPC, which amounts to giving a criminal colour to a matter that is essentially civil. There is nothing in the FIR or the prosecution papers to suggest that the applicant made any representation much less a false representation to opposite party No. 2 regarding his ownership of the property in question, or that he fraudulently induced him to part with any money or property. It is also relevant to note that the informant is not a purchaser of the land. The purchaser, Smt. Kajal, has also been implicated as an accused.

18. The crux of the allegation is that the applicant sold a property, claiming himself to be the owner, to co-accused Smt. Kajal, whereas the said property is not in existence due to earlier sale deeds executed from Khasra No. 6293/1m. The complicated questions involved in the present case are whether the vendor, Bijendra Singh, whose father's name appears in the revenue records had the right to sell his share, if any, in favour of the applicant, whether the applicant had any right to execute a subsequent sale deed in respect of the same portion of land in favour of co-accused Smt. Kajal, and whether the informant, who claims to be the power of attorney holder of the applicant and other co-sharers of the land, has any right or interest in the said land. All these questions are triable in a civil suit and not in a criminal prosecution.

19. In view of the above discussion and the legal position emanating from the judgments of the Hon'ble Supreme Court cited above, no case of cheating punishable under Section 420 IPC appears to be made out against the applicant. The matter is essentially of civil nature and is liable to be settled on the basis of the evidence of the parties in civil proceedings.

20. The present prosecution is nothing but an abuse of the process of law, therefore, proceedings are liable to be quashed. Consequently, the application (under Section 528 of BNSS) is **allowed**. The proceedings of Case No.17927 of 2024 (State vs. Irasad and Others), arising out of Case Crime No.64 of 2022, under Sections 420 and 120 B I.P.C., Police Station Civil Lines, District Meerut as well as order

dated 23.10.2024 passed by the learned Additional Chief Judicial Magistrate, Court No.5, Meerut are hereby **quashed** in respect of applicant.

(2025) 9 ILRA 28
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Application U/S 528 BNSS No. 27980 of 2025

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

Counsel for the Applicant:
Amarnath Tripathi, Narendra Kumar

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Matter pertains to:
"The only issue before this Court in the instant application is that if without sanction charge-sheet has been filed within stipulated period even for the offences for which sanction was necessary for cognizance then whether charge-sheet can be said to be incomplete charge-sheet and whether in such scenario an accused can be released on compulsory bail under Section 167(2) Cr.P.C."

Headnotes

Indian Penal Code, 1860 – SS. 389, 406, 420, 506, 411, 120B - The Prevention of Corruption Act, 1988 – S 13 - Code of Criminal Procedure, 1973 - Section 167(2) - Default/Compulsory bail - Charge-sheet filed within stipulated period but without sanction under S. 13 P.C. Act - whether incomplete charge-sheet – S. 173(2) Cr.P.C. does not require sanction order to accompany police report – S. 173(5) Cr.P.C. documents do not include sanction - Filing charge-sheet completes investigation - Sanction - obtaining sanction not part of investigation Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation Default bail - right extinguishes once charge-sheet filed within stipulated time Cognizance without sanction - illegality irrelevant for S. 167(2) - Ritu Chhabaria - distinguished - Order in *Ashok Kumar Srivastava* held *per incuriam* for non-consideration of binding Supreme Court precedents.

Held: Charge-sheet filed within time, even without sanction, is not incomplete -Default bail cannot be granted once charge-sheet is filed within stipulated period - Sanction irrelevant for determining completion of investigation - Cognizance without sanction does not confer right to default bail - No illegality in the impugned order - Application stands dismissed accordingly. (Paras 32,34,35,41,42) (E-7)

Case Law Cited

Sanjay Dutt v. State* (1994) 5 SCC 410; *Judgebir Singh @ Jasbir Singh Samra v. NIA* (2023) 17 SCC 48; *Narendra Kumar Amin v. CBI* (2015) 3 SCC 417; *CBI v. R.S. Pai* (2002) 5 SCC 82; *Narayan Rao v. State of A.P.* AIR 1957 SC 737; *Suresh Kumar Bhikamchand Jain v. State of Maharashtra* (2013) 3 SCC 77; *K. Veeraswamy v. Union of India* (1991) 3 SCC 655; *Ritu Chhabaria v. Union of India* (2024) 12 SCC 116;** *Ashok Kumar Srivastava and another Vs. State of U.P. (Application* **U/S 528 BNSS No. 21254 of 2025) (Held to be per incuriam)*

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Prevention of Corruption Act, 1988; **Constitution of India.**

List of Keywords

Incomplete charge-sheet, default bail/ compulsory bail, indefeasible right, sanction, cognizance, police report, stipulated period, fundamental right, per incuriam, investigation, supplementary charge-sheet.

Case Arising From

Application U/S 528 BNSS
Arising out of Case Crime No. 93 of 2024, P.S. Kotwali, District Gorakhpur.

Challenged order dated 23.07.2025 rejecting default bail.

Appearances for Parties
Advs. for the Applicant:
Sri Amarnath Tripathi,Sri Narendra Kumar
Advs. for the Respondents (State):
G.A., Sri Imran Khan, A.G.A., Sri Rajeev Dhar Dwivedi, A.G.A.

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

1. Heard Sri Amarnath Tripathi, learned counsel for applicant and Sri Imran Khan as well as Sri Rajeev Dhar Dwivedi, learned Additional Government Advocates for the State.

2. The instant application has been filed by the applicant with a prayer to quash the order dated 23.07.2025 passed by Additional Sessions Judge/Special Judge (P.C. Act) Court No.2 Gorakhpur whereby his application to release him on default bail has been rejected arising out of Case Crime No. 93 of 2024, under Sections 389, 406, 420, 506, 411, 120B IPC and Section 13 of The Prevention of Corruption Act, Police Station Kotwali, District Gorakhpur.

Brief facts of the case:-

3. FIR of the present case was lodged on 09.04.2024 against applicant and others under Sections 379, 406, 420, 506 IPC and Section 13 Prevention of Corruption Act (in short P.C. Act).

4. After registration of the FIR investigation was commenced and on 05.06.2024 charge-sheet has been filed against applicant for offences under Sections 389, 406, 420, 506 IPC and Section 13 P.C. Act and Section 411 IPC read with Section 120B IPC and on 07.06.2024, Magistrate concerned took the cognizance but it reflects, charge-sheet has been filed without sanction, which was obtained subsequently on 22.11.2024 and was forwarded to the court on 22.07.2025.

5. It reflects, according to applicant as charge-sheet against him was filed without sanction, therefore, the same was incomplete thus applicant moved an application under Section 167(2) Cr.P.C. with a prayer to release him on compulsory bail on the ground that charge-sheet was incomplete and cognizance was bad but vide order dated 23.07.2025 court concerned dismissed his application. Hence the instant application.

Submissions advanced on behalf of applicant:

6. Learned counsel for applicant submits, although charge-sheet in the present matter has been filed on 05.06.2024 which was within the prescribed time provided under Section 167 Cr.P.C. but as charge-sheet against applicant was also filed for offence under Section 13 P.C. Act, therefore, for cognizance sanction was necessary but without sanction charge-sheet has been filed against him thus charge-sheet dated 05.06.2024 filed against applicant was incomplete charge-sheet and it cannot be said in the instant matter investigation has been completed within prescribed time and therefore applicant was entitled to be released on default bail under Section 167(2) Cr.P.C.

7. He further submits, it appears, as prescribed time of 60 days was going to expire and sanction could not be obtained against applicant, therefore only with intention to defeat the indefeasible right of applicant to release him on compulsory bail provided under Section 167(2) Cr.P.C.

charge-sheet has been filed, which was not permissible.

8. He further submits, as per Section 167(2) Cr.P.C. if within prescribed time which was 60 days in the present case investigation has not been completed then an accused is entitled to be released on compulsory bail. He further submits, in present case, charge-sheet has also been filed for offence relates to P.C. Act, therefore, along with charge-sheet sanction order must also be filed but only to defeat the right of applicant provided under Section 167(2) Cr.P.C. charge-sheet has been filed without sanction. He next submits, as incomplete charge-sheet without sanction does not contemplate the police report provided under Section 173(2) Cr.P.C. and therefore applicant was entitled to be released on default bail under Section 167(2) Cr.P.C.

9. He further submits, right of an accused to release on default bail under Section 167(2) Cr.P.C. is his fundamental right under Article 21 of the Constitution of India if investigation has not been completed within prescribed time and this right cannot be extinguished if Investigating Officer filed incomplete charge-sheet only with intention to defeat his right of default bail under Section 167(2) Cr.P.C.

10. He further submits, the right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. is his indefeasible right and if charge-sheet within stipulated period of time has not been filed or incomplete charge-sheet has been filed then court has no other option except to release him on default bail if he makes prayer to release him on bail.

11. Learned counsel for applicant placed reliance on the judgment passed by the Apex Court in the case of **Ritu Chhabaria Vs. Union of India (2024) 12 SCC 116** and submitted, in this case the Supreme Court categorically deprecated the practice of Investigating Officer to file incomplete charge-sheet with intention to defeat the indefeasible right of an accused to release him on default bail under Section 167(2) Cr.P.C.

12. He further submits, in the case of Ritu Chhabaria (supra) also Investigating Officer filed incomplete charge-sheet and Supreme Court after considering this fact observed that right of default bail under Section 167(2) Cr.P.C. is not merely statutory but a fundamental right which flows from Article 21 of Constitution of India and was pleased to release the accused on compulsory bail under Section 167(2) Cr.P.C.

13. Learned counsel for the applicant also placed reliance on the order dated 11.07.2025 passed by this Bench in Application U/S 528 BNSS No. 21254 of 2025 (Ashok Kumar Srivastava and another Vs. State of U.P.) and submitted that in that case also without sanction charge-sheet was filed but after considering the judgment of Ritu Chhabaria (supra) this Bench by observing that the charge-sheet against the accused was incomplete directed the accused to release on default bail.

14. He further submits, therefore, order dated 23.07.2025 passed by the court concerned is illegal and is liable to be set aside and applicant should be directed to release on compulsory bail under Section 167(2) Cr.P.C.

Submissions advanced on behalf of State:

15. Per contra, learned Additional Government Advocates opposed the prayer and submitted that admittedly in the present matter charge-sheet against applicant has been filed on 05.06.2024 i.e. within the stipulated time of 60 days and therefore applicant cannot claim to be released on default bail under Section 167(2) Cr.P.C.

16. They further submitted that law is by far now settled that as soon as charge-sheet is submitted the right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. is extinguished.

17. They next submitted that however from the record it reflects, while forwarding the charge-sheet to the court concerned on 05.06.2024 sanction till date could not be obtained against the applicant and without sanction charge-sheet has been filed against him also for offence under Section 13 P.C. Act and even without sanction court concerned took the cognizance but by virtue of provisions of Prevention of Corruption Act cognizance taken by the court though may be illegal but on this ground applicant cannot be released on default bail under Section 167(2) Cr.P.C.

18. They further submitted that obtaining sanction against an accused not the part of the investigation and investigation relates to the facts of the case investigated by the Investigating Officer and after completing investigation Investigating Officer forwards his report to the competent authority for sanction and as soon as he forwards his report the investigation stands completed and therefore even if sanction could not be obtained and without sanction if Investigating Officer forwarded the charge-sheet to the court then also it cannot be said that the charge-sheet filed by him was incomplete charge-sheet. They further submitted that as soon as charge-sheet arrived in the court the right of an accused to release him on default bail under Section 167(2) Cr.P.C. stands extinguished if said charge-sheet has been filed within stipulated period of time.

19. They further submitted that in the present matter admittedly charge-sheet has been filed without sanction but it has been filed within stipulated period and therefore court concerned rightly dismissed the application filed by the applicant to release him on default bail under Section 167(2) Cr.P.C.

20. They placed reliance on the judgment passed by the Apex Court in the case of **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and others Vs. National Investigation Agency (2023) 17 SCC 48.** They further submitted that while passing the impugned order dated 23.07.2025 court concerned also considered this judgment of the Apex Court passed in the case of Judgebir Singh (supra).

21. They further submitted that therefore instant application filed by the applicant is devoid of merits and it should be dismissed.

Analysis:

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

23. The only issue before this Court in the instant application is that if without sanction charge-sheet has been filed within

stipulated period even for the offences for which sanction was necessary for cognizance then whether charge-sheet can be said to be incomplete charge-sheet and whether in such scenario an accused can be released on compulsory bail under Section 167(2) Cr.P.C.

24. From perusal of Section 167(2) Cr.P.C. it reflects, if a person is arrested and detained in custody and investigation could not be concluded within stipulated period of time which was 60 days in the present matter then an accused shall be released on bail therefore section 167(2) Cr.P.C. contemplates default or compulsory bail.

25. The Constitution Bench of the Apex Court in the case of **Sanjay Dutt Vs. State (1994) 5 SCC 410** held that in case of non completion of investigation within stipulated period of time the indefeasible right accrues to an accused to release him on bail under Section 167(2) Cr.P.C., however, in this case Apex Court further observed that if before making prayer to release him on bail charge-sheet has been submitted then right of an accused to release him on compulsory bail under Section 167(2) Cr.P.C. stands extinguished.

26. In case at hand, however admittedly within stipulated period of time charge-sheet has been filed but without sanction which was mandatory for taking cognizance for offence under Section 13 P.C. Act and therefore to analyse whether charge-sheet filed against applicant was incomplete it is necessary to go through Section 173(2) Cr.P.C. which describes the prescribed form of police report i.e. charge-sheet.

27. As per Section 173(2) Cr.P.C. a police report i.e. charge-sheet should be in the form prescribed by the State Government stating:-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appeare to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and if so whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170; and

(h) whether the report of the medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code

28. Therefore, from the provisions of Section 173(2) Cr.P.C. it could not be reflected, obtaining sanction is also one of the requirement in forwarding the police report i.e. charge-sheet.

29. Further, however, Section 173(5) Cr.P.C. states that when such report i.e. police report is in respect of an accused to which Section 170 applies the police officer shall forward to the Magistrate along with the report:-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and

(b) the statements recorded under Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses.

30. Therefore, from Section 173(5)(a) Cr.P.C. it reflects, in a case where accused is in custody under Section 170 Cr.P.C. then along with report all the documents on which prosecution proposes to rely should also be sent to the Court but it reflects, provisions of Section 173(5)(a) Cr.P.C. do not include the sanction order too.

31. The Apex Court in the case of Judgebir Singh (supra) was having occasion to discuss the issue and in this case also charge-sheet has been filed without sanction which was required but Apex Court after considering Section 173(5) Cr.P.C. held that Section 173(5) Cr.P.C. of course requires all the documents or all the extracts thereof on which prosecution proposes to rely, to accompany the final report but sanction order cannot be brought within the category of those documents contemplated under clause 5 of Section 173 Cr.P.C.

32. Therefore it reflects, even if along with the charge-sheet no sanction order has been forwarded then also it cannot be said that charge-sheet was incomplete and on this ground an accused cannot be released on default bail under Section 167(2) Cr.P.C.

33. Further, the Apex Court in the case of **Narendra Kumar Amin Vs. Central Bureau of Investigation and others (2015) 3 SCC 417** in para-15 observed as:-

"The observation made at para 76 of the Constitution Bench judgment of this Court in the case of K. Veeraswamy Vs. Union of India (1991) 3 SCC 655 that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in CBI Vs. R.S. Pai (2002) 5 SCC 82 case, after referring to the earlier judgment of the coordinate Bench in Narayan Rao Vs. State of A.P. AIR 1957 SC 737 case categorically held that the word "shall" used in sub- Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) and (5) Cr.P.C. which entitled him for default bail, was rightly rejected by the High Court and does not call for any interference by this Court."

34. Further, no doubt cognizance without sanction for offence under Section 13 P.C. Act should not be taken but even if on the report submitted by the police under Section 173(2) Cr.P.C. court concerned either wrongly took the cognizance or it

could not take the cognizance, it is irrelevant for the purpose of section 167(2) Cr.P.C. to release the accused on default bail because taking of cognizance and investigation are two entirely different matters. Therefore even if after investigation without sanction charge-sheet has been filed within prescribed period and along with the charge-sheet all the required documents have been sent then an accused cannot be released on default bail under Section 167(2) Cr.P.C. by declaring the charge-sheet incomplete. This issue is also no more res-integra and it has been effectively addressed by the Apex Court in case of **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra (2013) 3 SCC 77** delivered by Three Judges Bench of the Apex Court. In this case also without sanction charge-sheet has been filed and when accused applied for default bail under Section 167(2) Cr.P.C. then while dismissing his prayer the Apex Court in paragraph Nos. 18 and 19 observed as:-

"18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 Cr.P.C. is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 Cr.P.C. The scheme of the Cr.P.C. is such that once the investigation stage is completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) Cr.P.C., the Magistrate is vested with authority to remand the accused to custody, both police custody and/ or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 Cr.P.C. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) Cr.P.C. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that

view of the matter, the special leave petition deserves to be and is hereby dismissed."

35. Recently, the Apex Court in the case of Judgebir Singh (supra) after relying the judgment of Suresh Kumar Bhikamchand Jain (supra) held that filing of a charge-sheet is a sufficient compliance with the provisions of Section 167 Cr.P.C. and even if along with charge-sheet sanction order has not been forwarded then also an accused cannot claim to be released on statutory bail under Section 167(2) Cr.P.C. on the ground that as sanction has not been obtained therefore either cognizance is bad or it could not be taken.

36. Further, however, learned counsel for applicant placed reliance on the judgment of the Apex Court passed in the case of Ritu Chhabaria (supra) but it reflects, facts of the case of Ritu Chhabaria (supra) are quite distinguishable from the facts of the present case. In that case although charge-sheet was filed by the Investigating Officer but subsequently supplementary charge-sheet was also filed and therefore at the time of filing first charge-sheet investigation was still pending. In such circumstances the Apex Court took the view that there was no question of filing any supplementary charge-sheet taking the aid of Section 173(2) Cr.P.C. as sub section 8 of Section 173 Cr.P.C. comes into picture only after the investigation is completed and the charge-sheet has been filed. The Apex Court in the case of Judgebir Singh (supra) also distinguished the case of Ritu Chhabaria (supra) after considering this fact and therefore no benefit can be extended to the applicant in view of the observation made by the Apex Court in the case of Ritu Chhabaria (supra).

37. Further, however, in case of Ashok Kumar Srivastava (supra) on which reliance was placed by learned counsel for applicant this Court (this very Bench) after relying on the judgment of the Apex Court passed in the case of Ritu Chhabaria (supra) observed that as charge-sheet has been filed without sanction which was required for taking cognizance, therefore, charge-sheet is incomplete and accused of that case was directed to be released on default bail but from the order passed by this Bench dated 11.07.2025 it reflects, while passing the same this Bench could not take notice of the judgments of the Apex Court passed in case of Narendra Kumar Amin (supra), Suresh Kumar Bhikamchand Jain (supra) and Judgebir Singh (supra).

38. Further, it also reflects, while passing order in case of Ashok Kumar Srivastava (supra) this Court only relied upon the judgment of the Apex Court passed in case of Ritu Chhabaria (supra) and provisions of Section 173(2) and 173(5) Cr.P.C. could not be exhaustively dealt with.

39. Further, at the time of passing the order in case of Ashok Kumar Srivastava (supra), this Bench also could not consider the fact that facts of the case of Ritu Chhabaria (supra) were quite distinguishable from the facts of the case and in the case of Ritu Chhabaria (supra) it was not the issue before the Apex Court whether if charge-sheet has been filed within stipulated period of time but without sanction then also it can be considered incomplete.

40. Therefore, due to above reasons the decision given by this Bench in the case of Ashok Kumar Srivastava (supra) is per

incuriam and therefore no benefit can be given to the applicant on the basis of the case of Ashok Kumar Srivastava (supra).

41. Therefore, from the discussion made above, I find no illegality in the impugned order dated 23.07.2025 passed by the court concerned by which application under Section 167(2) Cr.P.C. of the applicant to release him on default bail has been dismissed.

42. Therefore, considering the facts and circumstances of the case discussed above, in view of this Court, the instant application filed by the applicant is devoid of merits and stands **dismissed** accordingly.

(2025) 9 ILRA 36
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.09.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482 No. 28653 of 2023

Himanshu Dubey ...Applicant
Versus
State Of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Bhagwan Dutt Pandey

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Matter pertains to whether the charge-sheet dated 19.1.2021, cognizance order dated 7.7.2023 and entire proceedings of Case No. 9029 of 2023 under S. 363 IPC can be quashed in exercise of jurisdiction under S. 482 Cr.P.C.

Headnotes

Indian Penal Code, 1860 - SS. 361 & 363 - Kidnapping from lawful guardianship - Interpretation - Scope and Applicability - "Takes" and "entices" - Requirement of promise, offer, inducement or force - Essential ingredients - Requirement of inducement/enticement or active participation – S. 164 Statement - Voluntary Leaving by Minor.
Criminal Procedure Code, 1973 - S. 482 - Quashing of proceedings - Investigation - Charge sheet - Failure to cite victim as prosecution witness.
Held: Victim's statements under S. 161 Cr.P.C. disclose that she left the home as the family member had beaten her and electrocuted her - Victim's statement under S. 164 Cr.P.C. before the court states that she went alone from the home and there was no one else along with her and the informant has incorrectly given the name of applicant - No inducement or enticement proved - Mere being in talking terms with another person resulting in victim leaving home would not attract penal provisions - Essential ingredients of S. 361/363 IPC not satisfied - Prosecution has failed to show that victim was enticed away by the applicant - Charge sheet defective - victim not made witness - no explanation provided - Charge-sheet , cognizance order and the entire criminal proceeding quashed - Application under S. 482 Cr.P.C. allowed.(Paras 11,13,15,22,24,25,26) (E-7)

Case Law Cited

Thakorlal D. Yadgdama v. State of Gujarat, **AIR 1973 SC 2313***; S. Varadarajan v. State of Madras,* **AIR 1965 SC 942***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

enticed away; voluntarily left the home; electric shock; talking terms; kidnapping from lawful guardianship; inducement; promise, offer or force; cognizance; charge sheet; minor; lawful guardian.

Case Arising From

Case No. 9029 of 2023 (State vs. Himanshu Dubey), arising out of Case Crime No. 0382 of

2020, P.S. Gauri Bazar, District Deoria, under Section 363 IPC, pending before the Chief Judicial Magistrate, Court/Room No. 17, Deoria.

Appearances for Parties
Advs. for the Applicant:
Sri Bhagwan Dutt Pandey
Advs. for the Respondents:
Sri O.P. Dwivedi, learned A.G.A. (State of U.P.)

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Bhagwan Dutt Pandey, learned Counsel for Applicant and Sri O.P. Dwivedi, learned A.G.A. for the State-respondent.

2. This application is preferred by applicant for quashing the charge sheet dated 19.1.2021 as well as cognizance order dated 7.7.2023 and the entire proceeding of Case No. 9029 of 2023 (State Vs. Himanshu Yadav), arising out of Case Crime No.0382 of 2020, under Section 363 I.P.C., Police Station-Gauri Bazar, District Deoria pending in the court of Chief Judicial Magistrate, Court/Room No.17, Deoria.

3. Learned counsel for Applicant submits that as per version of first information report, the prosecution case is that on 24.12.2020 the Applicant had enticed away niece of first informant, who was aged about 16 years and thereafter, informant lodged first information report against the applicant under Section 363 I.P.C. at Police Station-Gauri Bazar, District Deoria on 25.12.2020 in Case Crime No.0382 of 2020. The alleged incident took place on 24.12.2020 at 7.30 p.m. while the first information report was registered belatedly on 25.12.2020 at 19.40 HRS. but there is no explanation of delay in the first information report, which itself show that the entire story is false, fabricated and concocted because of malafide intention to implicate the applicant in the aforesaid case.

4. Learned counsel for Applicant further submits that during investigation, statement of alleged victim was recorded under Section 161 Cr.P.C. on 26.12.2020 who has taken the name of applicant and only stated that her family members had beaten her and also given electric shock that is why on 23.12.2020 at 6.30 p.m. she left the house alone and went to Siwan by bus and remained there for two days and thereafter, she was carried to Police Station-Gauri Bazar on 26.12.2020. The statement of mother of victim under Section 161 Cr.P.C. was also recorded who has stated about the love affairs of victim and applicant. The Investigating Officer has also recorded the statement of first informant under Section 161 Cr.P.C. who has reiterated the version of first information report.

5. Learned counsel for applicant submits that victim was produced for medico legal examination on 28.12.2020 where she denied for her internal and external examination. For ascertaining the age of alleged victim she was referred for X-ray, which was conducted on 29.12.2020 and as per X-ray report the age of victim was determined about 18 years by Chief Medical Officer concerned.

6. It is further submitted that the statement of victim under Section 164 Cr.P.C. was recorded on 1.1.2021, in which she stated that she left the house and no one was with her and the name of Himanshu Dubey has been taken by her family members willingly. The victim came under custody of her family members and

thereafter her medical was conducted on 28.12.2020 and X-ray was conducted on 29.12.2020 and thereafter, her restatement under Section 161 Cr.P.C. was recorded.

7. Learned counsel for Applicant urges that from perusal of statements under Sections 161 and 164 Cr.P.C. there is no involvement of applicant and the victim has not admitted the fact that she eloped with applicant, as such no offence under Section 363 I.P.C. is made out as there is no ingredient for constituting the offence under Section 363 I.P.C.

8. Learned counsel for Applicant further states that Investigating Officer without conducting the investigation properly and also against the evidence collected during investigation submitted charge sheet against applicant under Section 363 I.P.C. and the Magistrate took cognizance of offence vide order dated 7.7.2023.

9. Learned A.G.A. for the State submits that opposite party no. 2 lodged first information report against applicant under Section 363 I.P.C. with the allegation that daughter of complainant was abducted and victim who has been recovered and her statement under Section 161 Cr.P.C. has been recorded and she refused to conduct her medical examination and formal medical examination has been conducted and the statement of victim under Section 164 Cr.P.C. has also been recorded and she made allegation against her family members regarding giving electric shock and she stated that she herself had gone to Siwan and her family members given the name of Himanshu Dubey and first information report has been registered and on the basis of evidence collected during investigation charge sheet under Section 363 I.P.C. has been submitted against accused-applicant on 19.01.2021 on which the learned Magistrate has taken cognizance on 7.7.2023.

10. The first information report is lodged by opposite party no. 2 on 25.12.2020 with the allegation that on 24.12.2020 at about 7:30 p.m. the niece of informant, who is minor, is enticed away by the Applicant. The aforesaid first information report was lodged against the Applicant under Section 363 of Indian Penal Code.

11. During investigation, statement of victim was recorded by Investigating Officer under Section 161 Cr.P.C. The victim in her statement has stated that her family members have beaten and electrocuted her and as a result of the same on 23.12.2020 at about 6:30 p.m. she left the home and went to Pandey Biswa, thereafter came to Gauri Baazar & thereafter by bus came to Salempur and subsequently to Siwan and thereafter she was brought to police station.

12. The victim was medically examined on 28.12.2020 where she has stated before the doctor who examined her that she had left the home voluntarily on account of harassment by family members. Further, doctor after examining the victim has specifically recorded that no opinion regarding sexual assault can be given.

13. The statement of victim under Section 164 of Criminal Procedure Code was recorded before the concerned court where the victim has stated that she is aged about 17 years and on 23.12.2020 at about 6:30 p.m. the uncle of victim has beaten her on account of talking to applicant and as a result of the same victim sustained injuries

and he further electrocuted the victim and as such she left the home alone and went to Siwan. The victim in her statement has specifically stated that she went alone from the home and there was no one else along with her and the informant has incorrectly given the name of applicant as victim was in talking terms with applicant.

14. As per learned counsel for Applicant, victim was taken into custody by family members and thereafter in her second statement under Section 161 Cr.P.C., victim has stated that she and applicant were in talking terms over mobile phone which came to the knowledge of family members of victim and thereafter Applicant taken away victim on 23.12.2020 at 6:30 p.m. after victim leaving home alone and thereafter met the applicant at Pandey Biswa. Thereafter, applicant was with the victim till Salempur to Siwan and came back on 26.12.2020. The victim has specifically stated that during the said time victim was with the applicant, the applicant has not committed any sexual assault.

15. The Investigating Officer thereafter submitted chargesheet against applicant under Section 363 of Indian Penal Code and court concerned has taken cognizance on 7.7.2023. A perusal of the aforesaid chargesheet would go to show that victim has not been made a witness in the aforesaid chargesheet on behalf of prosecution and only the informant and Sandhya Devi has been made the witness of fact. It is further to be noted that no explanation has been offered by learned counsel for the opposite parties with regard to victim not being made witness to prosecution chargesheet. The chargesheet has been submitted under Section 363 of Indian Penal Code against applicant.

16. The offence under Section 363 of Indian Penal Code prescribes punishment for kidnapping. Section 359 of Indian Penal Code provides Kidnapping of two kinds: Kidnapping from India and Kidnapping from lawful guardianship. In the present case, the issue involved in respect of kidnapping from lawful guardianship. The offence with regard to kidnapping from lawful guardianship is prescribed under Section 361 of Indian Penal Code. Section 361 of Indian Penal Code is quoted as under :-

"361. Kidnapping from lawful guardianship.—*Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.*

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

17. The provision of Section 361 of Indian Penal Code would stand attracted when a person takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the

keeping of lawful guardian of such minor or person of unsound mind, without the consent of such guardian. It is imperative for applicability of above mentioned section of Indian Penal Code that there must be any promise, offer, inducement or force, from the accused which resulted in the minor being taken away or enticed away from lawful guardianship.

18. In **Thakorlal D. Yadgdama Vs. The State of Gujarat, AIR 1973 Supreme Court 2313,** the Supreme Court while interpreting Section 361 of Indian Penal Code has observed as follows : -

"9*... The expression used in Section 361, I.P.C. is "whoever takes or entices any minor". The words "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, "to cause to go" ,"to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time in achieving its ultimate purposes of successful inducement. The two words "takes" and "entices", as used in Section 361, I.P.C., are in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 I.P.C."*

19. It is further to be seen that the rigours of Section 361 of Indian Penal Code will have its effect where the minor is taken away from the lawful guardianship without the consent of guardian or she is allured or given any promise or inducement or offer which has resulted in enticing away the minor from the lawful guardianship. The element of non-voluntary leaving of minor from the lawful guardianship on the basis of force, promise or inducement or offer is an important aspect to attract the penal provision. An eventuality may arise where the minor voluntary and on his own accord, leaves the lawful guardianship then in such circumstances the applicability of Section 361 of Indian Penal Code may not arise. In this respect, the Supreme Court in **S. Varadarajan Vs. State of Madras, AIR 1965 SC 942** has observed as under :-

"(9). It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful

guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian."

20. In the present case, as per allegation in first information report it is alleged that applicant has enticed away victim from the home of informant as the victim was in talking terms over mobile phone with applicant. The victim in her first statement under Section 161 Cr.P.C has not supported the prosecution case and has stated that she had voluntarily left the home as the family members of the victim have beaten her and electrocuted her. Further, the victim in her statement under Section 164 of Criminal Procedure Code before the court concerned has specifically stated that uncle of victim had seen the victim talking to applicant on phone and as a result of same she was beaten and given electric shock, as such she went out of house alone. She has also stated that family members of victim has deliberately given the name of applicant in criminal prosecution.

21. It is further to be seen that statement of mother of victim has also been recorded under Section 161 of Criminal Procedure Code where she has stated that victim was in talking terms with the applicant and wanted to marry applicant. However, when she was asked not to talk with applicant then the victim left the home. She has also stated that she is confident that the applicant has enticed away the victim.

22. The statement of father of victim (informant) was also recorded by Investigating Officer who has stated that applicant has enticed away the victim. The statement of informant does not disclose the manner in which the victim has been enticed away by applicant. The statement of informant only raises suspicion without there being any material particulars as to how the victim has been taken away by the applicant-accused. It is further relevant to note that in support of chargesheet only two witnesses of fact are cited by prosecution, the first being the informant and the second being Sandhya Devi, who is the mother of victim. Both the aforesaid witnesses have not given any material particulars or details as to how the victim has been enticed away. Mere being in talking terms with another person resulting in victim leaving home would not attract penal provisions. The statement of victim under Section 164 of Criminal Procedure Code is not being denied by the prosecution/opposite party before this Court. The victim in her statement has stated that she was in talking terms with applicant and she has stated that she has voluntary left the home.

23. The material particulars and circumstances with regard to enticing away the victim by the applicant has not been disclosed by prosecution. Mere talking to victim by itself cannot be a circumstance which would be treated as enticing away the victim. The victim in her statement has also alleged that family members of victim has beaten her and electrocuted her and as a result of same she has left the house.

24. The prosecution has failed to show that victim was enticed away by the applicant. The essential ingredients of offence under Section 363 of Indian Penal Code is not made out by learned counsel for opposite party before this Court. The cognizance order also does not disclose the material circumstances which were before the trial court.

25. In view of the aforesaid, the criminal proceedings against the applicant in the above mentioned case is not tenable under law as such the charge-sheet dated 19.1.2021, cognizance order dated 7.7.2023 and the entire criminal proceedings arising out of Case No. 9029 of 2023 (State Vs. Himanshu Dubey) arising out of Case Crime No. 0382 of 2020 under Section 363 of the Indian Penal Code, Police Station Gauri Bazar, District Deoria pending before the Chief Judicial Magistrate, Court/Room No. 17, Deoria are hereby quashed.

26. Accordingly, the present application filed under Section 482 Cr.P.C. is **allowed**.

(2025) 9 ILRA 42
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.09.2025

BEFORE

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

Appeal U/S 37 Of Arbitration & Conciliation Act 1996 No.- 52 of 2023

UCM Coal Company Ltd. ...Applicant
Versus
Adani Enterprises Ltd. ...Respondent

Counsel for the Applicant:
Pritish Kumar, AAG, Vibhanshu Srivastava, Suyash Manjul

Counsel for the Respondent:
Mr. Vikram Nankani (Sr. Adv.), Pranjal Krishna, Abhishek Dwivedi, Suhaib Ashraf, Brijesh Kumar, Manish Mehrotra, Utkarsh Srivastava

Issue for consideration

Regarding legality of order and judgment dated 31.03.2023 passed by the Commercial Court-I, Lucknow

Headnotes

Arbitral tribunal-View by the Tribunal cannot be said to be without supporting evidence-Tribunal has taken note of the rival submissions, the material on record as well as the evidence to give a cogent construction to the terms of the contract-cannot be said to be perverse-Arbitral Tribunal is vested with the power and discretion to deal with the evidence-it has been exercised correctly-not bound by strict rules of procedure or evidence. (E-9)

Case Law Cited

1. PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781
2. South East Asia Marine Engg. & Constructions Ltd. (SEAMEC LTD.) v. Oil India Ltd., (2020) 5 SCC 164
3. State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275
4. DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357
5. UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116
6. AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321
7. Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375

List of Acts

1.Arbitration and Conciliation Act, 1996

List of Keywords

Power and discretion; not bound by strict rules; Arbitral Tribunal; perverse

Appearances of parties

Counsel for Petitioners(s):Pritish Kumar, AAG, Vibhanshu Srivastava, Suyash Manjul

Counsel for Respondent(s) : Mr. Vikram Nankani (Senior Advocate) with Pranjal Krishna, Abhishek Dwivedi, Suhaib Ashraf, Brijesh Kumar, Manish Mehrotra, Utkarsh Srivastava

(Delivered by Hon'ble Jaspreet Singh, J.)

1. The respondent as claimant had initiated arbitral proceedings before an Arbitral Tribunal which culminated in a unanimous award dated 20th November 2018, in favour of the respondent. The appellant preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, the Act of 1996) which was dismissed by the Commercial Court-I, Lucknow vide order and judgment dated 31.03.2023 and being aggrieved from the same, the appellant preferred this appeal before this Court under Section 37 of the Act of 1996.

Factual Matrix

2. In order to appreciate the controversy involved in the instant appeal, it will be worthwhile to take a glance at the facts, briefly.

3. The Ministry of Coal, Government of India in furtherance of Government Company Dispensation Scheme allocated Chhendipada and Chhendipada-II Coal Blocks jointly to Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., Chhatisgarh Mineral Development Corporation and Maharashtra State Power Generation Corporation Limited who jointly ventured to explore and undertake mining operations from the allocated coal blocks.

4. The above three Government Corporations incorporated a Special Company for the purpose of development, exploration and mining of coal blocks namely UCM Coal Company Ltd. (hereinafter referred to as 'UCM/appellant')

5. The appellant for the purposes of development and exploration of the coal blocks as allocated, floated tenders through international competitive bidding process to select a mine developer and operator for the two Chhendipada Coal Blocks allocated to the appellant. Several bids were received and upon its examination, the bid of the respondent was found favourable and it was accepted.

6. A letter of award dated 27th October, 2010 was issued to the respondent which was followed by a formal mining contract which was signed on 05th February, 2011. In the said mining contract, the appellant was described as a 'mine owner' whereas the respondent was described as the 'mine operator'.

7. The mining contract broadly envisaged three stages; (i) approval and clearance stage (ii) development stage and (iii) operation stage.

8. The approval and clearance stage inter-alia required the respondent to prepare mining plans, seek clearances and approval required for starting mining activities, coal washery and other incidental infrastructural activities including preparing a railway siding.

9. It also required the respondent to obtain forest clearance, environmental clearance, clearances related to the drawl of power and water, license for explosives and clearance for land acquisition and resettlement as per requirement for 5 to 10 years of mining activities.

10. While, the said contract was still at the clearance stage, the coal block allocations came under the scrutiny of the Supreme Court of India in a Public Interest Litigation initiated by Shri Manohar Lal Sharma. The same came to be decided by the Supreme Court of India vide its

judgment dated 25.08.2014 followed by an order dated 24.09.2014 and the coal allocations, including relating to Chhendipada and Chhendipada-II were cancelled.

11. It is in this context that disputes arose between the appellant and the respondent.

12. The matter was referred for Arbitration before an Arbitral Tribunal comprising of Hon'ble Mr. Justice K.A. Punj (Retd.), who was the party nominated Arbitrator for the respondent, Hon'ble Mr. Justice, N.K. Mehrotra (Retd.) who was the party-nominated arbitrator for the appellant and the two party-nominated arbitrators appointed Hon'ble Mr. Justice Deepak Verma, (Retd. Judge of the Apex Court) as the Presiding Arbitrator.

13. The respondent, who was the claimant before the Arbitral Tribunal, had laid its claims for recovering expenses incurred by the claimant in the process of acquisition of land in the coal block, expenses incurred towards setting up of mine infrastructure and for mobilizing movable and immovable assets, and such amount which was paid or committed as advances including for capital commitments.

14. The claims of the respondent were disputed by the appellant inter-alia taking a ground that the respondent had engaged sub-contractors without prior written consent of the appellant, which was prohibited in the mining contract. It was also contended that inflated claims had been made by the respondent which could not be substantiated.

15. Before the Tribunal, five issues were framed and after the parties were given an opportunity to lead evidence, the Tribunal after hearing the parties passed a unanimous award on 20th November, 2018 inter alia allowing the claims of the respondent to the tune of Rs. 126,63,21,44/- along with the interest at the rate of 11% per annum. The respondent was also awarded interest of 11% per annum on the amount allowed by the Tribunal through an interim award dated 31.01.2017. The Tribunal, however, deferred the payment of interest on the amount of Rs. 126 crores which was payable by the respondent to its consultant PMC, who had an award in its favour against the respondent till the decision on a petition filed by the respondent under Section 34 of the Act of 1996 challenging the award in favour of PMC Projects (India) Pvt. Ltd.

16. The appellant being aggrieved assailed the said award before the Commercial Court-I at Lucknow in a petition under Section 34 of the Act of 1996 which came to be registered as Arbitration Case no. 369 of 2019. The Commercial Court-I, Lucknow after hearing the parties dismissed the said petition by means of its judgment and order dated 31.03.2023 which is under challenge before this Court in appeal under Section 37 of the Act of 1996.

Submissions on behalf of the appellant:-

17. Mr. Pritish Kumar, learned Additional Advocate General for the State of U.P. assisted by Sri Suyash Manjul and Sri Vibhanshu Srivastava, has structured his submissions in three layers:-

(i) The Arbitral Tribunal has misconstrued the contractual clause and given an interpretation which amounts to re-writing the contract;

(ii) Certain claims have been allowed for which there was no evidence before the Tribunal; and

(iii) Claims were awarded on the basis of certain documents which could not be made the basis for granting and allowing such claims.

18. Elaborating his submissions, the learned counsel for the appellant submitted that the mining contract clearly prohibited engagement of a sub contractor without the prior written consent of the appellant. He referred to Clauses 12.2, 27.5 and 27.6 of the mining contract dated 05.02.2011.

19. It was further submitted that the respondent had engaged several entities such as PMC Projects (India) Pvt. Ltd. (in short 'PMC'), SPARC Pvt. Ltd. (in short 'SPARC'), G.V. Info-solutions Pvt. Ltd. (in short 'GVI'), Hydro Geo Survey Consultants Pvt. Ltd. (in short 'Hydro') and Vimta Labs Ltd. (in short 'Vimta') without the prior written approval, hence, there was a clear violation of the above noted provisions of the contract.

20. It was urged that the respondent had setup a claim that the entities aforesaid were not sub-contractors but were consultants, however, it was submitted that the mining contract did not envisage engagement of any consultant nor they were recognized as per the mining contract.

21. Any commitment made by the respondent to such entities who did not have the written approval of the appellant, and any amount paid or committed to be paid by the respondent to such entities could not be extended to be recoverable from the appellant.

22. It was also submitted that not only the above mentioned entities were engaged without the prior written consent of the appellant but they had been engaged much prior to the date of signing of the mining contract, hence, any obligation arising between the said entities and the respondent could not be made enforceable against the appellant.

23. Mr. Kumar submitted that primarily the major component of claims as raised by the respondent related to the payments said to have been made or committed to be paid to primarily the major sub contractors, namely the PMC and GVI, however, their engagements were never disclosed to the appellant. Even under the mining contract, the respondent was required to keep the appellant abreast with the developments and progress by submitting reports from time to time which was also not done which was a further breach made by the respondent.

24. Mr. Kumar emphasized that Clause 27.6 of the mining contract clearly indicated that there was no scope for any implied approval or consent. Thus, even if the respondent at some later point of time, in their progress reports had made a mention of such engaged entities yet the fact remains that in absence of any prior written consent, their engagement could not be ratified nor there could be a deemed approval from the side of the appellant. Thus, the engagement of such entities at the behest of the respondent stood vitiated from its inception, vis-a-vis the appellant who cannot be made, perforce to satisfy, or

subrogate the contractual liability having arisen between the respondent and the said sub contracting entities.

25. It was further submitted that the mining contract had defined the relevant terminology so that no extended meaning could be ascribed to the words and expressions used in the said contract by any party. Hence, the respondent who as part of their claims had stated that the entities were not sub-contractors but were consultants and the said mining contract did not give any indication regarding engagement of any consultant and by mere usage of the word consultant, the respondent cannot camouflage the actual status of such entities who were none other than sub contractors.

27. The Arbitral Tribunal while dealing with the said issue went much ahead and ascribed its own interpretation to the scope of engagement of sub contractors in derogation of the provisions of the mining contract and treating the said entities to be consultants by referring to the meaning given to the word 'sub contractor' and 'consultant' in a Law Lexicon but ignoring the fact that in the mining contract, the terms were given certain specific meaning and as such the Tribunal committed a grave error in effectively re-writing the contract which was a patent illegality.

28. It was further urged that since the mining contract did not envisage engagement of consultants, hence, any consultant engaged by the respondent would be at its own peril. Alternatively, it was urged that the respondent could give any name to the engagement of such entities but since the said entities worked and performed such services which were part of the mining contract in terms of the Clause 8 and admittedly there was no prior written approval, hence, the work done by them would make their status to be a sub contractor and this aspect has not been considered by the Tribunal as well as the Commercial Court I, Lucknow.

29. In support of his aforesaid submissions, Mr. Kumar has relied upon the decision of the Apex Court in **(i) PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781 (ii) South East Asia Marine Engg. & Constructions Ltd. (SEAMEC LTD.) v. Oil India Ltd., (2020) 5 SCC 164 (iii) State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275.**

30. Mr. Kumar further submitted that a huge sum has been awarded by the Tribunal as payments which were paid and committed to be paid by the respondent to the sub contracting entities without any evidence.

31. It was elaborated by Mr. Kumar that if any payments were made by the respondent to the said third party sub-contracting agencies, then the respondent should have brought the invoices raised by such entities on record but no such invoices were placed on record nor any corroborating evidence was placed on record of the Tribunal to substantiate the genuineness of the amount claimed and the details of any payment made to the said third party contractors, except certain amount which was admitted by the appellant and were cleared for payment.

32. It was also pointed out that the work order which was issued by the respondent to the third party sub-contracting entity clearly indicated that the

said entity would raise an invoice. It is in this context, it was urged, that in absence of any invoice raised by the entity on the respondent, the amount could not have been said to be proved nor the liability could have been said to have crystallized, which would make the appellant liable to reimburse the respondent for it.

33. It was stated that primarily, the large part of the claim of the respondent was based on the reimbursement of the expenses and in absence of adequate evidence, the Tribunal as well as the Commercial Court-I, Lucknow committed an error in overlooking this crucial aspect. Accordingly, the findings returned by the Tribunal as well as the Commercial Court-I, Lucknow is rendered perverse as it is not supported by any evidence on record.

34. Mr. Kumar further submitted that in order to dress the claim with a cloak of legitimacy, the respondent had filed certificates issued by their Chartered Accountant, however, there were glaring discrepancies in the said certificates as well. The CA certificates up to June, 2014 indicated pre-cancellation expenses as 76.94 crores, however, upon the cancellation of the coal block allocations, suddenly the expenses and project costs escalated manifold and was shown to be Rs. 494 crores. Major claims relating to coal washery and capital commitments were apparently unsupported as no invoice or appropriate documentation or entries made in the books of accounts maintained by the respondent in their usual course of business were filed and in absence of any such cogent evidence, the amount claimed by the respondent under the aforesaid, claim could not have been mechanically awarded by the Tribunal and more so this issue was raised before the Commercial Court, however, it did not appropriately notice and deal with the said objection resulting in sheer miscarriage of justice.

35. In support of his aforesaid submissions, Mr. Kumar has relied upon a decision of the Apex Court in **DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357** to urge that if any finding or claim has been allowed without evidence then the same is liable to be set aside.

Submissions on behalf of the respondent:-

36. Mr. Vikram Nankani, learned Senior Counsel, who had joined the proceedings through video conferencing, assisted by Mr. Pranjal Krishna and Mr. Abhishek Dwivedi, learned counsel for the respondent submitted that the scope of an appeal under Section 37 of the Act of 1996 is limited to whether an order passed by the Court in proceedings under Section 34 of the Act of 1996, to set aside the award, or refusing to set aside the award, is just and appropriate keeping in mind the limited grounds as envisaged in Section 34 of the Act of 1996 itself.

37. Since the proceedings of Section 34 of the Act of 1996 is not in the nature of an appeal as understood in context with regular civil litigation and unless the grounds as set out in Section 34 of the Act of 1996 itself is made out till then this Court would not interfere under Section 37 of the Act of 1996 as the scope of the appeal is even narrower than under Section 34 of the Act of 1996.

38. It was further submitted that the scheme of the Act of 1996 is such that the Arbitral Tribunal has been recognized as

the exclusive authority to deal with the matter before it. The Tribunal has the power and jurisdiction to give its finding by construing the clauses of the contract. If the Tribunal upon assessing the evidence before it has taken a view by construing the clause of contract then unless the said view ascribed by the Tribunal is found to be so preposterous, that no fair minded person can arrive at such construction or interpretation till then the view of the Tribunal is to be respected and it is binding.

39. The Tribunal has also been given the exclusive authority to examine, sift and evaluate the evidence and its finding based on such evidence cannot be re-appreciated or re-examined both in terms of quality and quantity either by the court in exercise of powers under Section 34 of the Act of 1996 or by the Appellate Court in terms of Section 37 of the Act of 1996. It is in this context that the scope of the Appellate Court is said to be even narrower and in support of his aforesaid submissions, he has relied upon the decision of the Apex Court in **(i) UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 and (ii) AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321.**

40. Armed with the aforesaid decisions, Mr. Nankani further urged that no infirmity could be pointed out by the learned counsel for the appellant referable to the findings given in the order dated 31.03.2023 passed by the Commercial Court. He further argued that the Commercial Court being conscious of its limitations as prescribed by law in exercise of its powers under Section 34 of the Act of 1996 evaluated the submissions and found that the basis of the entire argument raised by learned counsel for the appellant rested on the premise relating to the interpretation of the clauses of the mining contract and the view formed by the Arbitral Tribunal thereon was based on evidence and it was well within the domain of the Tribunal to be so hence it refrained from interfering with the Award.

42. It is further urged that the Tribunal had not only noticed the submissions of the respective parties but also copiously referred to clauses of the contract and referred to the cross-examination of the witnesses to amplify the manner in which both the contracting parties understood the working of the said contract and thereupon gave its findings unanimously, which cannot be disturbed in a petition under Section 34 or in an appeal under Section 37 of the Act of 1996. Now, the attempt of the learned counsel for the appellant to suggest that the Commercial Court overstepped its jurisdiction, is nothing but to tempt this Court to enter an arena of re-appreciating of evidence which is not for this Court to do in terms of Section 37 of the Act of 1996.

44. The learned Senior Counsel for the respondent further submitted, without prejudice to his aforesaid submissions relating to the scope of interference in proceedings under Section 34 and 37 of the Act of 1996, that the mining contract is a hugely specialized contract. It is true that the contract was divided in three stages and it is also true that the instant contract did not move ahead beyond the first stage of approvals and clearance as it was cancelled by the Apex Court in the Public Interest Litigation instituted by Shri Manohar Lal Sharma, however, even the clearances and approvals were not mere simple clearances which were required to be obtained in a routine course, from the Government Agencies.

46. The approvals and clearances related to environmental clearance, also involved acquisition of land including a resettlement of the persons displaced. Complete mine plans had to be prepared which also involved laying of railway sidings. These clearances required a detailed specialized study and only thereafter such reports are prepared which are assessed by experts and only thereafter, if it is found that there is no negative impact on the environment, would such permissions be granted.

47. It was also submitted that the contract did not require the mine operator (i.e. the respondent) to have all in-house facilities so that no outside help could be engaged. For preparation of such specialized reports, specialists and consultants are engaged and it is for the very same reason that the contract did not put an embargo for the mine operator to not engage any consultant specifically.

48. It was further urged that there is essentially a marked difference between a consultant and a sub-contractor. Though, the engagement of a sub contractor without the prior written consent of the mine owner was envisioned in the contract but it did not prohibit the engagement of a consultant by the mine operator nor it required the prior written consent of the mine owner.

49. In the aforesaid backdrop, the respondent had clearly raised this issue before the Tribunal and led ample evidence to substantiate that the PMC, GVI, Hydro, Vimta Labs and SPRAC were consultants who were specialized entities having expertise in their respective fields and they were engaged only for the purposes of consultancy to guide the respondent in facilitating the procurement of the said clearances and approvals.

50. It was also pointed out that all such approvals and clearances were applied by the respondent as an agent of the appellant. The respondent followed the terms of the mining contract scrupulously and at each stage furnished the progress reports to the appellant to keep it well informed of the work undertaken by the respondent.

51. It was also submitted that alongwith the aforesaid progress statements, the necessary reports prepared by such expert entities were also submitted and the appellant was very well aware of the specialized work done by the aforesaid consultants and at no point of time, there was any objection or demur on the part of the appellant on this count.

52. It is only after the cancellation of the coal block allocation and upon claims raised by the respondent did this idea germinate within the appellant-corporation to create a ruse to deny the legitimate claims of the respondent.

53. Mr. Nankani, learned Senior counsel further submitted that the Tribunal has clearly drawn out the distinction between a sub contractor and a consultant and it also took note of the evidences of the respective parties and thereupon it gave its finding that the entities were consultants and not sub contractors. Accordingly, the Tribunal held that the claim of the respondent could not be refused on the ground that the entities were sub contractors and were engaged without prior consent of the appellant.

54. The learned Senior Counsel also breezed through the records to substantiate

that ample evidence was filed by the respondent before the Tribunal to substantiate its claim for reimbursement relating to the money paid and committed to be paid to the third party entities. Work orders were placed on record and it was also pointed out that one of the consultants namely PMC had also instituted arbitral proceedings against the respondent and the pleadings relating to the said arbitration was also placed on record before the Arbitral Tribunal, dealing with the dispute between the appellant and the respondent.

55. It was also pointed out that as far as claims regarding the PMC made against the respondent is concerned, they related to payments which were to be made by the respondent to the PMC on milestone basis, arising out of this particular mining agreement. Moreover, the milestones were achieved which is not quite disputed, accordingly, now the appellant cannot take the plea that the claims raised by the third party, namely PMC, against the respondent appears to be collusive or inflated.

56. It was urged that the appellant had been the beneficiary of the said contract, inasmuch as, the matter relating to land acquisition and other clearances and the ancillary work done by the said third party agencies had been recognized by the appellant who relied upon the same while submitting the necessary document before the Ministry of Coal. This in itself, proved the fact that not only the appellant was aware of the working of these consultants but he was also aware of the fact that the milestones as set out had been achieved by the said third party consultant.

57. The learned Senior Counsel also submitted that certain discrepancies as sought to be pointed out by the learned counsel for the appellant, suggesting inflation in the claim amount as indicated in the certificates issued by the Chartered Accountants is not tenable. It was submitted that the respondent in its usual course of business prepared its books of account and being a company the said accounts are duly audited and are certified by a Chartered Accountant. It is not the case of the appellant that the certificates issued by the Chartered Accountant are false and fabricated rather the objection appears to be that up to the pre-cancellation stage of the coal allocation, the expenses were shown as Rs. 76.94 crores whereas post cancellation, the said amount was shown as Rs. 494 crores.

58. Explaining the same, it was stated that upon the cancellation of the coal block allocation, it was certain that no further activity would be done in furtherance of the said mining contract, hence, all the expenses or losses had to be accounted for at that point of time. Accordingly, the submission was that this aspect was also considered both by the Tribunal and the Commercial Court and it cannot be said that the view taken is bad in the eyes of law or there was no evidence in this regard or that the findings are based on inadmissible documents.

59. It was pointed out that the Tribunal also noted the standard accounting procedures on the basis of which such certificates were issued by the Chartered Accountant which were not shown to be false or patently against the settled accounting procedures, hence, on the basis of evidence, the Tribunal arrived at findings which cannot be said to be bad in the eyes of law. Thus the said findings are not amenable to any further re-appreciation by this Court especially once the award had

been accepted by the Commercial Court, who refused to set it aside in proceedings under Section 34 of the Act of 1996.

60. It was also urged that evidence was filed in several volumes before the Arbitral Tribunal which has been duly noted and thereafter a unanimous award has been passed by the Tribunal. Thus, to suggest that there was no material or evidence before the Tribunal to support the findings is absolutely incorrect. Accordingly, the decision cited by learned counsel for the appellant in Delhi Metro (supra) is clearly distinguishable on facts, and in any case it is not applicable to the present case.

61. It was also submitted that the award clearly takes note of the claims and the defence including the counter claim of the appellant. On the basis of the respective pleadings, the Tribunal framed expressive issues upon which evidence was led and after considering the submissions specific findings have been recorded which are well reasoned and such findings cannot be said to be bad. Moreover, considering the award has been affirmed by the court in proceedings under Section 34 of the Act of 1996, in such circumstances, the attempt of the appellant to persuade this Court to re-appreciate the evidence and to act as an Appellate Court, as understood in regular civil proceedings, is not appropriate, hence, for all the aforesaid reasons, the appeal deserves to be dismissed.

Discussions and Analysis

62. The Court has heard the learned counsel for the parties and also perused the material on record.

63. At the outset, it will be appropriate to notice the contours of scope and jurisdiction of this Court while dealing with an appeal under Section 37 of the Act of 1996.

64. The Apex Court in **MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163** has held as under:-

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the

dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

15. Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of reassessment of the material on record, but only in terms of the principles governing interference with an award as discussed above.

16. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the arbitrator's jurisdiction to consider the same. [See McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] ;

Pure Helium India (P) Ltd. v. ONGC [Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593] and D.D. Sharma v. Union of India [D.D. Sharma v. Union of India, (2004) 5 SCC 325] .]"

65. Similarly, the Apex Court in **UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116** has observed as under:-

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539] , wherein it has been observed as follows : (SCC p. 540, para 2)

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can

be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

19. In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (Parsa Kente Collieries case [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

"9.1. … It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [NHAI v. ITD Cementation India Ltd., (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716] , SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10

SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29."

(emphasis supplied)

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

'24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.'

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

'25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity

unpardonable under Section 34 of the Arbitration Act."

66. Again, the Apex Court in **Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375,** has held as under:-

"32. Post award interference and the extent of the second look by the courts under Section 34 of the A&C Act has been a subject-matter of perennial parley. The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an Arbitral Tribunal, whose decision is binding on the parties. [See Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549, which examines arbitrability and non-arbitrability of subject-matters and claims, which aspect will not be examined in this case.] It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is un-warranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute adjudicated by the judiciary. The process is informal, and need not be legalistic [The expression "judicially", does not equate arbitration with formal/court proceedings, and would include a just and fair decision.] . Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law. While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a "judicially" sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

33. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.

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37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is "in conflict with the public policy of India", if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in

conciliation proceedings. Suffice it is to note at this stage that while "fraud" and "corruption" are two specific grounds under "public policy", these are not the sole and only grounds on which an award can be set aside on the ground of "public policy".

38. Act 3 of 2016 with retrospective effect from 23-10-2015 has substituted the Explanation referred to above, by two new Explanations that are differently worded. [Explanations 1 and 2 to sub-clause (ii) to clause (b) of Section 34(2) of the A&C Act substituted vide Act 3 of 2016 read as under:" Explanation 1.— For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if— (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or(ii) it is in contravention with the fundamental policy of Indian law; or(iii) it is in conflict with the most basic notions of morality or justice.Explanation 2. — For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. Sub-section (2-A) of Section 34 of the A&C Act inserted vide Act 3 of 2016 reads as under: "34. (2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."] Sub-section (2-A) to Section 34 of the A&C Act, which was instituted by Act 3 of 2016 with retrospective effect from 23-10-2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted Explanations to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act in the present case.

39. The expression "public policy" under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] (for short Saw Pipes), held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice. The concept of "public policy" connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

40. Nevertheless, the decision in Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects:

(a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position;

(b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and

(c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally.

In Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , the Court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and penalty stipulations. This view had held the field for a long time and was applied in subsequent judgments of this Court in Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] , Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd. [Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245] , DDA v. R.S. Sharma & Co. [DDA v. R.S. Sharma & Co., (2008) 13 SCC 80] , J.G. Engineers (P) Ltd. v. Union of India [J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758 : (2011) 3 SCC (Civ) 128] , and Union of India v. L.S.N. Murthy [Union of India v. L.S.N. Murthy, (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368] .

41. In 2006, this Court in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] despite following the ratio of Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , made succinct observations regarding the restrictive role of courts in the post-award interference. In addition to the three grounds introduced in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , as noticed above, an additional ground of “patent illegality” was introduced in Saw Pipes Limited, for exercise of the court's jurisdiction in setting aside an arbitral award. This Court, in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , held that patent illegality, must be such which goes to the root of the matter. The public policy violation should be so unfair and unreasonable as to shock the conscience of the court. Arbitrator where s/he acts contrary to or beyond the express law of contract or grants relief, such awards fall within the purview of

Section 34 of the A&C Act. Further, what would constitute public policy is a matter dependent upon the nature of transaction and the statute. Pleadings of the party and material brought before the Court would be relevant to enable the Court to judge what is in public good or public interest, or what would otherwise be injurious to public good and interest at a relevant point. So, this must be distinguished from public policy of a particular government.

42. A similar view was expressed in Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] with the clarification that where a term of the contract is capable of two interpretations and the view taken by the arbitrator is a plausible one, it cannot be said that the arbitrator travelled outside the jurisdiction or the view taken the arbitrator is against the terms of the contract. The Court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being the Court does not sit in appeal over the findings and decision of the arbitrator, while deciding an application under Section 34 of the A&C Act. The arbitrator is legitimately entitled to take a view after considering the material before him/her and interpret the agreement. The judgment should be accepted as final and binding.

43. Subsequently, in ONGC Ltd. v. Western Geco International Ltd. [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] (for short Western Geco), a three-Judge Bench of this Court observed that the Court, in Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , did not examine what would constitute "fundamental policy of Indian law". The expression "fundamental policy of Indian law" in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of "fundamental policy of Indian law". The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the Arbitral Tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C Act ["31. Form and contents of arbitral award. — (1)-(2) * * *(3) The arbitral award shall state the reasons upon which it is based, unless— (a) the parties have agreed that no reasons are to be given, or(b) the award is an arbitral award on agreed terms under Section 30"] states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-

clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness [As expounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA).] . At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute "fundamental policy of Indian law", as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

44. The decision of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head "fundamental policy of Indian law". It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

45. Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every

arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

67. Recently, the Apex Court in **AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321** has held as under:-

"29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85, para 25] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : ; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]

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31. The term "public policy" in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental

policy of Indian law, or (b) the interest of India, or (c) justice or morality. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, para 66] In ONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes, (2003) 5 SCC 705] , this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and must be so unfair and unreasonable that it shocks the court's conscience; it cannot be of a trivial nature. [Id, para 31; McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 59.] Such patent illegality includes a situation where the award is in contravention with substantive law. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705, para 54; Associate Builders v. DDA, (2015) 3 SCC 49, para 42.1]

32. Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263, para 39] i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. [Associate Builders v. DDA, (2015) 3 SCC 49, para 31] However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence. [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10, para 10 : as cited in Associate Builders v. DDA, (2015) 3 SCC 49, paras 32-33 : (2015) 2 SCC (Civ) 204.]"

68. Taking note of the perimeter set out by the Apex Court in the aforesaid decisions, it will now be apposite to consider the submissions of the respective parties.

69. The primary contention of the learned counsel for the appellant revolved around construction of clauses, rights and obligation flowing from the contract to submit that the third parties were sub contractors who had been engaged without the prior written consent of the appellant and not consultants. Hence, their engagement was de hors the contract. Consequently, any amount payable by the respondent to the said third parties were at the peril of the respondent and could not be extended or fastened on the appellant.

70. In order to appreciate the aforesaid contention, it will be apposite to reproduce Clauses 12.2, 27.5 and 27.6 of the mining contract and the same reads as under:-

"12.2 Subcontracting and Assignment

(a) The Mine Operator may, with the prior written approval of the Mine Owner's Representative, enter into subcontracts for the execution of any part of the Mining Services, which shall not be unreasonably withheld. However, subcontracting of "Overall Mine supervision and management" would not be allowed.

(b) The Mine Operator shall at all times remain solely responsible and ilable for all acts, omissions, and other failures of any of its employees, personnel, or other persons that it subcontracts any of its obligations hereunder and any actions on the part of such person shall be attributable to the Mine Operator. The Mine Owner shall interact only with the Mine Operator for all matters related to the performance of this Agreement.

(c) The Mine Operator shall at all times ensure that its subcontractors comply with all Applicable Laws including those related to industrial relations, sofety and environment. For the voidance of doubt, it is clarified that any and all subcontracting activities shall be in compliance with the Contract Labour (Regulation and Abolition) Act, 1970. It is expressly clarified that for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970, the "principal employer" shall be deemed to be the Mine Manager and not the Mine Owner. In this regard, the Mine Operator agrees to indemnify and hold harmless the Mine Owner against any claims, costs, expenses, damages and charges levied or incurred by the Mine Owner in relation to any non-compliance by the Mine Manager, the Mine Operator or any of its subcontractors, of any provision of the Contract Labour (Regulation and Abolition) Act, 1970.

(d) In the event that the Mine Operator appoints a subcontractor with the approval of the Mine Owner, the Mine Operator shall continue to be solely responsible for all its obligations. The Mine Owner shall interact only with the Mine Operator for all matters related to the performance of this Agreement. The Mine Owner, if the situation so warrants, under emergency conditions, and in the event the Mine Owner, acting reasonably, belleves that any act or omission is a or potentially may result in (a) the commission of an illegal act; (b) safely or environmental issues relating to the Project; may interact, Instruct and direct the sub-contractors and the Mine Operator shall ensure that the sub-contractors are required to follow all such directions of the Mine Owner. The Mine Owner shall at all times keep the Mine Operator informed of any such direct interactions with the sub-contractors. It is clarified that such direct interactions will not absolve the Mine Operator from its responsibilities and obligations specified in the Agreement. Further any direction, instruction given to the sub-contractor shall be complied by the Mine Operator as if directly given to the Mine. Operator

(e) The Mine Operator shall, in the event of any industrial disputes, labour unresis etc involving the Mine Operator's workforce on the Site (but not the Mine Owner's employees), ensure that the Mine Operator is able to meet its delivery obligation in regard to the Monthly Contracted Quantity (MCQ). Further, under this clause the Mine Operator shall be responsible to maintain the MCQ only for those scenarios where the Industrial dispute, labour unrest has arisen on account of reasons attributable to the Mine Operator. For the purpose of this clause where the Mine Operator fails to maintain and achieve delivery obligations of MCQ leading to shortfall in delivery then the provisions for penally on account of shortfall in delivery shall be applicable.

The Mine Operator shall not, without the express prior written consent of the Mine Owner, assign to any third party, except in favour of Lenders for financing the Project, the Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

Further, the Mine Owner shall also not assign any part of the scope of work which forms part of this agreement to any third party without the express consent of the Mine Operator.

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27.5 Approval or Consent requirements

Unless otherwise expressly provided in this Agreement, where a Party's approval or consent to any act or matter is required under this Agreement:

(a) the approval or consent shall be in writing;

(b) the approval or consent shall be obtained prior to the act or matter to which it relates;

(c) the approval or consent may be refused, given unconditionally, or given subject to conditions in the discretion of the Party giving it; and

(d) the Parties shall not be unreasonable in refusing, delaying or Imposing conditions on its approval or consent.

27.6 No Implied approval by the Mine Owner

The Mine Operator acknowledges that no comment, review, representation, vatting, inspection. testing or approval by the Mine Owner or the Mine Owner's Representative in respect of the Mine Operator's obligations under this Agreement shall lessen or otherwise affect the Mine Operator's obligations under this Agreement."

(emphasis supplied)

71. As far as the aforesaid clauses are concerned, it leaves no doubt that in order to engage or employ a sub contractor, the respondent was required to take a prior written consent of the appellant.

72. It is also not in dispute that the contract did not envisage any system of deemed or implied consent rather it stipulated that the consent had to be expressed in writing.

73. The record would further indicate that the Tribunal had clearly delineated the differences between a 'contractor' in contradistinction, to a 'consultant'. It could not be disputed that the clearances which were required to be procured under the mining contract, entailed specialized and expert studies, preparation of complex reports, monitoring handling and execution of development work which inter alia required environmental impact studies and such specialized work could not be done by a sub-contractor as usually understood but could be done by specialized consultants who are domain experts.

74. It also could not be disputed that though the contract prohibited engagement of a sub-contractor but it did not create any embargo on hiring a consultant. It was a consistent case of the respondent that it did not engage any sub contractor rather it engaged consultants for carrying out specialized studies which were necessary to obtain the required approvals and clearances and only thereafter the development of the mine could commence.

75. The respondent during the evidence stage before the Arbitral proceedings had examined their witness who was cross-examined by the appellant and the said witness clearly stated that the third party agencies were consultants and not sub contractors.

76. The record would also indicate that the appellant had also sent a letter to the Ministry of Coal dated 04.02.2015 wherein

it had referred to the progress made by the appellant with the aid of the respondent mine operator. The said letter clearly referred to the studies which had been made and submitted by M/s Vimta, M/s Hydro and PMC.

77. The witness who appeared on behalf of the appellant before the Arbitral Tribunal clearly admitted the fact that the claimants were aware of the reports submitted by the experts. The said witness also admitted the fact that even though the studies submitted by the Specialized Agencies were available with the appellant and were submitted by the respondent but at no point of time, the appellant objected to the same or flagged the issue with the respondent regarding engagement of these agencies (sub contractors as alleged by the appellant) without prior written consent of the appellant.

78. This Court finds that the Tribunal has referred to the oral as well as documentary evidence copiously to arrive at a finding that the contract did not prohibit the engagement of a consultant. It also recorded a finding that the third party entities were consultants and not sub-contractors and that the appellant was aware of their engagement and the work done by them which was filed and submitted by the respondent while submitting its progress report with the appellant, and the appellant did forward the said progress reports and studies to the Ministry of Coal.

79. In light of the said overwhelming evidence indicating the manner in which the contract was understood and acted upon by the parties, a view has been subscribed by the Tribunal which cannot be said to be without supporting evidence or it is a view which cannot be culled out from the terms of the contract by any prudent person.

80. Merely because another view may be possible it will not persuade this Court to overstep its jurisdiction to enter into the arena of re-appraisal and re-appreciation of evidence and interfere with a pure finding of fact, which relates to the construction of a contract entered between the parties, moreso when the oral evidence and the cross-examination of the witnesses clearly amplified the manner in which both the contracting parties understood and proceeded with the contract.

81. In the instant case, the Tribunal has taken note of the rival submissions, the material on record as well as the evidence to give a cogent construction to the terms of the contract which cannot be said to be perverse. For the said reasons, the decisions cited by learned counsel for the appellant in PSA, Sical Terminals Pvt. Ltd. (supra), SEAMAC Limited (supra) and Sal Udyog Pvt. Ltd. does not help the appellant in any manner.

82. In light of the aforesaid discussions, this Court does not find much credence in the submission of the learned counsel for the appellant that the Tribunal has re-written the contract ignoring the import of Clauses 12.2, 27.5 to 27.6 of the mining contract. The plea does not impress this Court, hence, it is turned down.

83. The next ground of attack made by the learned counsel for the appellant is based on the premise that there was no evidence at all worth its name before the Tribunal which could justify the grant of claims and thus the award suffers from the vice of being arbitrary and perverse.

84. In this regard, it will be significant to note that the respondent had filed a copy of an award dated 20th July, 2017 which was passed by a sole Arbitrator, relating to arbitral proceedings deciding the disputes between PMC against the respondent herein.

85. In terms of the said award, the said Arbitral Tribunal had awarded a sum of Rs. 125 crores in favour of PMC against the respondent. At the time when the instant award was made by then, the respondent had challenged the award in favour of the PMC before the Competent Court in Ahmedabad and it is for the said reason that in the instant proceedings, the Tribunal though awarded the reimbursement of a sum of Rs. 125 crores which was a liability crystallized in the arbitral proceedings between PMC and the respondent but since that was under challenge in proceedings under Section 34, at the behest of the respondent, accordingly, the payment of interest thereon was deferred while making the award, which is under challenge before this Court.

86. It will also be relevant to point out that even though the said award was placed on record of the instant arbitral proceedings and the respective parties had led their evidence while the respondent had connected the said award in their evidence through their witness, and it was noticed that the payment was to be made by the respondent to PMC, based on milestone achieved and the same has been considered by the Arbitral Tribunal in paragraphs 7.81 to 7.84 of the award dated 20th November, 2018.

87. The record also indicates that the respondent inter-alia had filed the work order given to PMC dated 04.11.2010 marked as Exbt. C-86, coupled with the fact that it was not the case of the appellant that PMC had not done the work rather the record would reflect that the appellant was very well aware of the work done by PMC and once the award passed in favour of the PMC was brought on record of the instant arbitral proceedings, this being a judicial determination was a credible piece of evidence to establish the liability of the respondent especially when there was no contrary evidence against it. Moreover, it could not be demonstrated as to how the said arbitral award would not be admissible or the findings recorded therein would not bind the respondent i.e. A.E.L.

88. The record clearly reflects that the respondent before the Arbitral Tribunal had filed the copy of the work order issued to PMC, several letters exchanged between PMC and A.E.L. The copy of the award was also produced on record bearing Exbt-C-92. Along with the award, the respondent had filed a copy of the statement of claim filed by PMC including the supporting documents filed by PMC in the arbitral proceedings. A copy of the affidavit of the Authorized Signatory of A.E.L which was filed in evidence in the arbitral proceedings between PMC and A.E.L. was also filed.

89. In light of the aforesaid documentary evidence, there was ample material before the Arbitral Tribunal which has been considered and it is not the case of the appellant that the aforesaid documents were not connected by the respondent in their evidence. It is also not the case of the appellant that they were not permitted to cross-examine the respondent-witness. Thus, in case if the opportunity was granted which was not availed or even if availed, nothing substantial could be elicited which could cast a doubt over the said documents,

in such circumstances, it cannot be said that it is a case of no evidence.

90. An Arbitral Award, which is placed on record of another arbitral proceedings, can be a highly important piece of evidence. Though, its evidentiary value and weight given to such evidence may differ from case to case but the fact remains that it is not as if the said document does not have any evidentiary value at all. The said award passed in favour of the PMC against A.E.L., is relevant evidence and has presumption of its correctness unless it can be shown by a party to be false or incorrect.

91. As noted above, nothing could be demonstrated on behalf of the appellant to indicate that the findings recorded in the said award between PMC and A.E.L. suffered from any error in the sense that in light of the pleadings and evidence (which was filed by A.E.L. in the current arbitral proceedings including the statement of claims and other evidence as mentioned above) and moreover an award which has the backing of a statute and unless challenged attains a status of a decree, hence, becomes admissible and unless shown to be incorrect, the same would have high probative value.

92. In the aforesaid background this Court finds that the Arbitral Tribunal is vested with the power and discretion to deal with the evidence and it has been exercised correctly. The Arbitral Tribunal is not bound by strict rules of procedure or evidence, hence, by taking note of the aforesaid material, it has returned findings which per se are supported by the evidence and it cannot be said to be perverse.

93. It is also an undisputed fact that though the respondent had challenged the award passed in favour of PMC before the Commercial Court at Ahmedabad, however, the said petition filed by the respondent was dismissed by means of order dated 04.05.2023 and the same has attained finality.

94. In this backdrop, merely because the work order issued by the respondent to PMC indicated that the payments would be made against the invoices but the invoices were not placed on record it would not be sufficient to defeat the claim of the respondent especially when the award passed in the arbitral proceedings between PMC and the respondent was placed on record and this very basis was also used by the appellant to submit the claims before the Ministry of Coal and it clearly delineated that the payment to be made by respondent to PMC was based on milestones. Accordingly, it cannot be said that there was no evidence on record to support the findings returned by the Tribunal or that this aspect has been overlooked by the Commercial Court. It is one thing to say that the finding may not be supported by any evidence and it is another thing to urge that on the basis of the evidence, the inference drawn by the Tribunal is erroneous.

95. In light of the aforesaid, the submissions of the learned counsel for the appellant appears to be unsustainable as the thrust of the submission to attack the grant of claims was on the premise that there was no evidence on record whereas from the perusal of the record and the award it would reveal that the respondent had led sufficient evidence to support their claims.

96. Accordingly, the decision, cited by the learned counsel for the appellant, of Delhi Metro (supra) is not applicable as it is not a case where the finding of the Tribunal is based on no evidence or that the Tribunal has referred and based its findings on irrelevant material or that vital evidence has been omitted, thus, for the said reason, the aforesaid submissions does not find favour with this Court.

97. The last submission of learned counsel for the appellant relating to the discrepancies in the CA certificates may not detain this Court for long for the reason that the certificates issued by the Chartered Accountant was considered by the Arbitral Tribunal in paragraphs 7.90 of the award and having referred to the Exbt. C-50 filed with the statement of claims by the respondent. The reference to the oral evidence and cross-examination of the witness explaining the entries as well as the accounting standards in pursuance whereof the entries were made in the certificates also indicating that the rise in the amount was based on account of due cancellation of the allocation of the Chhendipada Coal Block by the Apex Court and the deposits made to the entities as security had turned bad and they had to be accounted for in the books of account and they were reflected in the CA certificates.

98. The record reflects that the respondent had supported its claims by furnishing CA certificates. The said CA certificates certified that they have been issued after verification of the relevant documents and books of accounts. The Tribunal has accepted the same and merely because the author of the said certificates may not have been examined it will not per se render the said CA certificates to be inadmissible especially when the same were not challenged nor an objection relating to the said CA certificates was raised and further the appellant could not demonstrate as to any discrepancy or incorrectness in the said certificates either during the cross-examination of the witness or otherwise.

99. Since, the Arbitral Tribunal is not bound by strict rules of evidence, it has the discretion to rely upon the said documents which has been done and there is nothing on record to show that the appellant ever objected to its admissibility or to its probative value. The genuineness of the CA certificate was not under cloud and it was also not demonstrated that the said certificates were not issued in context with standard accounting practice.

100. Thus it cannot be said that the Tribunal incorrectly relied upon the CA certificate and for the said reason, the findings of the Tribunal are perverse. Hence, this Court is not inclined to interfere with the award on this ground as well.

Conclusions:-

101. For the aforesaid detailed discussions, this Court is of the clear opinion that the award passed by the Tribunal dated 20.11.2018 and the order passed by the Commercial Court-I, Lucknow dated 31.03.2023 does not fall foul of the patent illegality or being against the public policy test, hence, the appeal is dismissed. There shall be no order as to costs.

(2025) 9 ILRA 69
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 118 of 1985

Iluwa & Ors. ...Appellants
Versus
State ...Respondent

Counsel for the Appellants:
Amar Saran, Rajendra Prasad, S.C. Srivastava

Counsel for the Respondent:
A.G.A.

Issue for Consideration

The key issue was whether the prosecution proved its case beyond reasonable doubt u/s 307 r/w 34 IPC, particularly the effect of the prosecution's failure to explain the serious, unexplained injuries on appellant which raised doubts about the genesis of the incident and the reliability of the prosecution witnesses.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 307 r/w 34-Challenge to-Conviction-Non-Explanation of Accused's injuries-Effect on Prosecution case-Appellant sustained serious injuries, the prosecution denied or failed to offer any explanation –Prosecution witnesses become unreliable-Thus, the appellants were entitled to the benefit of doubt-Appeal allowed.

Held

Appellant sustained injuries in the incident, including a fracture of the shaft of the ulna in lower one third portion of the forearm-The prosecution witnesses (PW-1) totally denied that the accused were assaulted or sustained injuries-The Doctor(PW-4) and X-Ray technician duly proved the injuries and fracture of the Appellant-the prosecution's complete failure to explain the serious injuries sustained by the accused renders the prosecution story doubtful-The prosecution has suppressed the genesis and origin of the occurrence and is not presenting the true version of the incident-In such case, the benefit of doubt must be accorded to the accused.(Para 19 to 26) (E-6)

Case law cited

Mohar Rai Vs State of Bihar,(1968) 3 SCR 525,State of Gujarat Vs Bai Fatima, (1975) 2 SCC 7,Lakshmi Singh & Ors Vs State of Bihar,(1976) 4 SCC 394,Nand Lal & Ors Vs State of Chhattisgarh, (2023) 10 SCC 470,Lakshmi Singh & Ors Vs State of Bihar,(1976) 4 SCC 394,State of Rajasthan Vs Madho (1991) Supp (2) SCC 396,State of M.P. Vs Mishri Lal (2003) 9 SCC 426 & Nagarathinam Vs State (2006) 9 SCC 57 referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code,1973

List of Keywords

Appellants, Acquittal, Trial Court, Abated, Attempt to murder with common intention, Informant (Chunni Lal), Non-explanation of injuries, Benefit of doubt, Firearm injuries, Vital Part, Fracture, Blunt object, Country made Pistol, genesis.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 118 of 1985
From the Judgment and Order dated 12.09.2025 of the High Court of Judicature at Allahabad.

Iluwa & Ors. Vs. State

Appearances for Parties

Adv. for Appellant(s)
Amar Saran, Rajendra Prasad, S.C. Srivastava
Adv. for Respondent(s)
A.G.A.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Rajendra Prasad, learned counsel for the appellants and Sri

Satyendra Nath Tiwari, learned AGA for the State.

2. Vide order dated 22.08.2025, the instant appeal on behalf of the appellant no.3 Munuwa has already been abated. Therefore, the instant appeal on behalf of the surviving appellants no.1 and 2 namely Illuwa alias Hari Shankar and Bilua alias Umashankar is being heard and decided.

3. The instant appeal has been filed by the appellants being aggrieved by judgment and order dated 16.01.1985 passed by the IInd Additional Sessions Judge, Banda in S.T. No. 343 of 1983 whereby the appellants herein were convicted for the offence under Section 307 read with Section 34 IPC and were sentenced to undergo five years rigorous imprisonment.

4. The brief facts as stated in the prosecution case are that on 28.11.1978 at 5:00 P.M., the informant- Chunni Lal lodged a report at police station Tindwari, alleging therein that he has gone to the agricultural land of Ram Avtar along with a villager Shiv Nandan to cultivate the land, which was taken on sharing. The accused persons namely Illuwa, Bilua and Munuwa armed with firearms came there at around 11:00 A.M. Illuwa came near the informant who was sitting there, Illuwa had fired upon him with a country made pistol due to which he sustained inury above the right eyebrow. At the same time, Bilua came there and started assaulting with lathi, due to which he sustained injuries on his head and legs. On the basis of the aforesaid allegation, the FIR was registered against the appellants Illuwa, Bilua and Munuwa for the offence under Section 307 IPC. The medical examination of the injured informant, who was conducted by Dr. V.P. Bhargava. During medical examination of the informant Chunni Lal, he found the following injuries :

"(i) Lacerated would 6.5 c.m, x 1 c.m. x 0.8 c.m. on middle of head 10 c.m. above the rest of nose.

(ii) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.2 c.m. on right side of forehead 2 c.m. above the middle of right eye brow.

(iii) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.4 c.m. on right side of forehead 0.5 c.m. above two outer side of eye brow.

(iv) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.3 c.m. on right side of face 1 c.m. above the upper lip.

(v) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.3 c.m. on right side of neck 5 c.m. below Loubule of right ear. Margin of injury to (ii) to (v) are inverted ± abraded collar.

(vi) Sub conjectival haemorrhage ± Ecchymosis of upper lid of right eye.

(vii) Red contusion 7 c.m. x 2 c.m. on left leg 2 c.m. inner to outer malleolus."

5. As per the opinion of the Doctor ? Injuries no. (i), (vi) and (vii) were simple in nature and caused by blunt object. Injuries no. (ii) to (v) were caused by fire arm and kept under observation X-ray advised.

6. With regard to the same incident, another FIR was lodged by Illuwa alias Harishankar alleging therein that he was having a previous enmity with Chunni Lal, the informant herein and he along with one

Shivnandan came to his tube well and all of sudden started beating him with lathis. When he shouted for help, the witness Bala came there and they were chased. The accused persons ran away due to the assault by the said Chunni Lal and Shivnandan. He had sustained injury on head and left hand. Dr. V.P. Varghava had also medically examined the injuries found on the body of appellant no.1, Illuwa alias Hari Shankar. During medical examination of Illuwa alias Hari Shankar, he found the following injuries:

"(i) Lacerated wound 2 c.m. x 1.5 c.m. x 0.3 c.m. on left side of head 83.5 c.m. above the root of left pinna.

(ii) Lacerated wound 0.5 c.m. x 0.3 c.m. x 0.3 c.m. on right side of forehead 2 c.m. above the outer side of right eye brow.

(iii) Red contusion 5 c.m. x 1.2 c.m. with swelling 7 c.m. x 6 c.m. on back of left forearm 4 c.m. above the wrist joint.

7. As per the report, three injuries were found. Injuries no. (i) and (ii) were simple injuries and injury no. (iii) was kept under observation. X-ray was advised and as per the X ray report, there was a fracture or shaft of ulna in lower one third portion of forearm.

8. In support of the prosecution case, the prosecution examined the informant Chunni Lal as P.W.1. B.D. Katiyar, S.I., P.W.2, Shivnandan Singh, P.W.3 and Dr. V.P. Bhargava, P.W.4.

9. In Section 313 Cr.P.C. statement, the appellants herein had denied the charges and submitted that the case has been lodged due to the enmity. The appellant no.1, Illuwa alias Hari Shankar has stated that Chunni Lal and Shivnandan came to his tube well and assaulted with lathis. He stopped the lathi and in self defence he also assaulted with lathi and also got fracture in his hand. When they were assaulting him, his father has fired from a country made pistol. He has also reported the case and cross case is also going on. The appellant Munuwa has stated that the informant Chunni Lal and Shivnandan had assaulted his son Illuwa alias Hari Shankar with lathis and to save him, he had fired from country made pistol.

10. Appellant no.2, Bilua alias Umashankar has stated that he was not on the spot. In support of their defence they had examined Rajdev Chaudhary as D.W.1 who was X ray technician.

11. P.W.1 has supported the prosecution case as stated in the FIR and in his statement, he has further categorically stated that the appellant no.1, Illuwa alias Hari Shankar was having a country made pistol, Bilua alias Umashankar was having lathi and a gun, appellant no.3, Munuwa was having a gun. The first fire was made by Illuwa alias Hari Shankar from country made pistol with intention to kill him, due to which, he sustained injuries above the right eye brow. In the meantime, Bilua alias Umashankar also came near him and assaulted him with lathi, due to which he also sustained the injuries on his head and legs. After he sustained the injuries since the blood was oozing out, he banded the same with a safi and went to his village and thereafter along with Shivnandan, Shivadhar and Subba, he came to Police Station- Tindwari. Thereupon, the report was registered and his medical examination was got conducted. His statement was recorded after one and half month of the

incident by the Investigating Officer. He has denied that he is not aware that the appellant no.3 Munuwa lodged the report of the incident prior to lodging of report by him. He has also denied that he had assaulted any of the accused persons or any of his associates have assaulted any accused person. Appellant no.2, Bilua alias Umashankar has also stated that there was previous enmity between them. It is further stated by him that where he was assaulted, the said place was 25 lathis away from the tube well of the appellants. He has further denied the suggestions that they have assaulted the accused persons and thereupon in self defence the injuries were caused by the accused persons. P.W.2 is the Investigating Officer, who had conducted the investigation and having found the charges proved against the appellants herein, had submitted the charge sheet.

12. P.W.3, Shivnandan has denied the incident as such he has not witnessed the incident. He was declared hostile. He denied that any statement was recorded by the Investigating Officer.

13. P.W.4 is Dr. V.P.Bhargava who has supported his medical examination report as already noted herein above and proved the same. On his subsequent examination, he has admitted that on the date of incident i.e. 28.11.1978 at around 8:00 P.M. in the night, he had also examined P.W.1, Illuwa alias Hari Shankar and he has also proved the injuries sustained by the appellant no.1 as noted herein above. He submitted the medical examination report of Illuwa alias Hari Shankar, which was exhibited as Kha-2.

14. D.W.1, Rajdev Chaudhary who was the X ray technician, was examined as defence witness. He has proved the X ray report of the appellant no.1 Illuwa alias Hari Shankar. In his cross-examination, he has denied that the wrong X ray report was submitted or X ray report was changed. On the basis of the aforesaid evidence, the trial court has found that the appellants, who were armed with lathi and country made pistol, were the aggressor in the incident and thereby assaulted the informant and caused the injuries to the informant as has been noted.

15. The trial court has found that the offence under Section 307 read with Section 34 IPC is fully proved against all the appellants herein. Accordingly they were convicted under Section 307 read with Section 34 IPC and were sentenced for five years rigorous imprisonment, against which the instant appeal has been filed.

16. Learned counsel for the appellants submits that in the instant case, it is fully established that the appellant no.1, Illuwa alias Hari Shankar has also sustained injuries in the said incident and there was a fracture on his hand. However, there is a total denial on the part of the prosecution and injuries caused to appellant no.1. The injuries of appellant no.1 have been duly proved in the instant case. Therefore, there is no explanation on behalf of the prosecution with regard to the injuries sustained by the appellant no.1. Thus they are entitled for acquittal.

17. So far as the injuries caused to the informant are concerned, the same are categorically admitted by the appellants herein. However, they had properly explained how the injuries were caused and it is the case of the appellants that they have acted in self defence and thereby caused injuries on the informant. Therefore, any act done in self defence would not

amount to any crime. Thus, they are entitled for acquittal.

18. Per contra, learned AGA submits that it is admitted case of the appellants no.1 and 3 that they have caused injuries to the informant Chunni Lal and the informant has categorically stated that it were all three appellant who had caused injuries. The manner of incident has already been explained by the informant. The trial court has categorically recorded the finding that when three persons armed with lathi and country made pistol had assaulted the informant on the vital part and the informant was alone assuming that the informant had caused the injuries upon the appellant no.1 itself, then there was no occasion for appellant no.1 to assault with a country made pistol. Therefore, the appellants herein were the aggressor in the incident and have caused the injury with lathi and also with country made pistol on the vital part of the informant. Therefore, he categorically stated that the offence under Section 307 read with Section 34 IPC proved against all the appellants herein. Thus they were rightly convicted. Learned AGA submits that the instant appeal filed by the appellants deserves to be dismissed.

19. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record, it is apparent that the informant as well as the appellant no.1 had sustained injuries on their body. The informant has sustained two firearm injuries and three gun shot injuries. All gun shot injuries are on the vital part of the body. The appellant no.1 has also sustained injuries as has been duly proved in the instant case and due to such injury, there was a fracture on the left forearm of the appellant no.1. There is a total denial on the part of the prosecution with regard to the injuries sustained by the appellant no.1 whereas the defence has categorically stated that it were the appellant no.1 and 2 who had caused the injuries on informant in self defence as the informant has assaulted the appellant no.1 with lathi. However, no explanation with regard to the said injury sustained by appellant no.1 has been given by the prosecution.

20. In **Mohar Rai vs. State of Bihar, (1968) 3 SCR 525,** the Apex Court has observed as follows:

"The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances ***the prosecution had a duty to explain those injuries.***

..... *In* ***our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."***

21. In **State of Gujarat vs. Bai Fatima, (1975) 2 SCC 7,** the Apex Court has observed as under:

"In a situation like this **when the prosecution fails to explain the injuries on the person of an accused depending on the facts of each case, any of the three results may follow:**

(1) That ***the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self - defence.***

(2) It makes ***the proseution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.***

(3) It dos not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

22. In **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394,** the following observations have been made by the Apex Court :

" It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) ***That the prosecution has sup- pressed the genesis and the origin of the occurrence and has thus not presented the true version:***

(2) ***that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;***

(3) ***that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.***

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosedition one. *In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where the* ***non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy,***

that it far outweighs *the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."*

23. In **Nand Lal and others vs. State of Chhattisgarh, (2023) 10 SCC 470,** the Apex Court has relied upon the above observations made in **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394,** the Apex Court has further placed reliance in **State of Rajasthan vs. Madho (1991) Supp (2) SCC 396, State of M.P. vs. Mishri Lal (2003) 9 SCC 426 and Nagarathinam vs. State (2006)9 SCC 57,** while acquitting the accused persons due to non explanation of injuries of accused by the prosecution.

24. Thus from the aforesaid judgments of the Apex Court, it can be safely concluded that non explanation of injuries sustained by the accused person by the prosecution, makes the prosecution story doubtful. That means the prosecution is not coming with clean hands and there is an attempt to suppress the real facts. Therefore, the prosecution witnesses becomes unreliable, and in case, the defence has given the explanation of the entire incident that becomes more reliable. Therefore, the benefit of doubt is to be accorded to the accused persons.

25. In the instant case, prosecution has completely failed to explain the injury sustained by the appellant no.1 and non-explanation of the injuries sustained by the accused persons by the prosecution creates a doubt about the prosecution story and it gives rise to the suspicion in the minds of the Court that the actual genesis of the incident is being suppressed by the prosecution and the prosecution is not coming forward with the actual story and is trying to suppress the actual incident. Therefore, the accused persons are entitled for benefit of doubt.

26. Accordingly, the instant appeal is **allowed**. The impugned judgment and order dated 16.01.1985 passed by the trial court convicting and sentencing the appellants no.1 and 2 herein is hereby **set aside**. The appellants no.1 and 2 are hereby **acquitted** of the charges.

27. The appellants no.1 and 2 are on bail. They need not surrender. Their bail bonds are cancelled and Sureties are discharged.

28. Office is directed to send a copy of this judgment along with the record to the trial court to be consigned.

(2025) 9 ILRA 75
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ANIL KUMAR-X, J.

Criminal Appeal No. 319 of 1984

Ravindra & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Seema Pandey (A.C.), P.N. Misra, Yadvesh Yadav

Counsel for the Respondent:
Dga

Issue for Consideration

Accused persons were allegedly intending to commit the act of sodomy with the deceased. The court addressed the key issue related to the reliability of the prosecution's evidence, specifically the testimony of the eye-witnesses and doubt ful nature of the circumstantial evidence.

Headnotes

Criminal matter-Criminal Procedure Code,1973-Section 374(2), 164-Indian Penal Code,1860-Sections 147, 201, 302/149-Contradictory statements of the witnesses-Late disclosure of the two more accused-explanation for not reporting the incident to anyone deemed unnatural and unsatisfactory-no sign of unnatural sex was found on the deceased's body-The I.O. found no blood stains at the scene-Blood-stained knives were recovered but the doctor (PW-4) stated that all injuries were caused by batons- statement recorded a month after the incident but no provided by the I.O. for the delay-Prosecution failed to prove its case beyond reasonable doubt-Appeal allowed. (E-6)

Held

The testimony of the eyewitnesses (PW-2 and PW-3)was not consistent and did not inspire confidence due to material contradictions between their statements u/s 164 CrPC and their trial depositions, coupled with the unnatural nature of their conduct-Further more, The investigation was seriously doubted due to the absence of blood at the alleged place of occurrence and the contradiction between the recovered weapons(knives) and the medical evidence(injuries caused by batons)-The court held that the prosecution had miserably failed to prove its case beyond a reasonable doubt-The appellant was acquitted of the charges.(Para 16 to 28)

Case law Cited:

Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh AIR 2022 SC 5273, Subramanya Vs State of Karnataka AIR 2022 SC 5110 , Chanan Singh Vs State of Haryana, 1971 SC 1554, State of Orissa Vs Mr. Brahmananda Nanda AIR 1976 SC 2488, Firoz Khan Akbar khan Vs The State of Maharashtra, 2025 LiveLaw (SC) 349-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Acquittal, Abatement, Contradictory Testimony, Eyewitnesses (PW-2 Satendra Pal, PW-3 Anil Kumar),Unreliable/Unnatural, Conduct, Material inconsistencies, Postmortem report, Motive, Recovery of Knives, Sodomy, Conviction.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 319 of 1984

From the Judgment and Order dated 12.09.2025 of the High Court of Judicature at Allahabad.

Ravindra & Ors Vs. State of U.P.

Appearances for Parties

Adv. for Appellant(s)

Seema Pandey (A.C.) P.N. Misra, Yadvesh Yadav

Adv. for Respondent(s)

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(Delivered by Hon'ble Anil Kumar-X, J.)

1. Heard Ms. Seema Pandey, learned Amicus Curiae for the appellants and Shri Amit Sinha, learned AGA for the State.

2. This criminal appeal has been preferred by the appellants Ravindra, Rishipal, Satendra and Brij Bhushan against the judgment dated 30.1.1984 passed in Sessions Trial No.257 of 1981 (State vs. Ravindra and Ors.). Appellants Ravindra and Rishipal were convicted and sentenced to six months' R.I. each under Section 147 IPC, two years R.I. under Section 201 IPC and imprisonment for life under Section 302/149 IPC. Appellants Satendra and Brij Bhushan were convicted and sentenced to one year's R.I. under Section 148 IPC, two years' R.I. under Section 201 IPC and imprisonment for life

under Section 302/149 IPC. Sentences were made to run concurrently.

3. During pendency of this appeal, appellants Rishipal, Satendra and Brij Bhushan died. Accordingly, appeal filed by them was declared abated on 4.7.2025.

4. Prosecution story in nutshell is that Pitam Singh (PW-1) lodged a complaint (Ex. Ka-1) before Police Station-Kotwali, District Muzaffarnagar on 27.2.1981 wherein he stated that his son Harendra Kumar, student of Class XII (Science), aged about 18 years left his house on a Hero Cycle to Civil Lines, North at about 6:15 pm on 26.2.1981 for obtaining herbarium sheets from market but he did not return by the midnight. Informant started searching for him but could not trace him. He came to know on 27.2.1981 at about 6:00 am that dead body of a boy was lying near Kutcherry Post Office. When he reached there, he found that dead body was of Harendra Kumar and bleeding from his nose was present. On the said complaint, an FIR (Ex. Ka-15), being Case Crime No.164/1981, was lodged at 7:10 am on 27.2.1981 against unknown persons. Investigation was handed over to SI Om Prakash Tomar (PW-10) on the same date. Dead body of Harendra was recovered behind the Post Office of Kutcherry. Blood stained and plain soil (Ex. Ka-17) were collected from place of occurrence. Inquest (Ex. Ka-2) was conducted and dead body was sent for postmortem. After the postmortem, postmortem report (Ex. Ka-10) was prepared by Dr. S.C. Gupta (PW-4). During investigation on 27.2.1981, Investigating Officer came to know from Virendra that in the evening at about 7:00 pm, Harendra along with other accused Ravindra, Satendra, Rishipal, Santerpal, Brij Bhushan and other 2-3 boys were talking with each other. On next day, Investigating Officer was informed by police informer that one Mahadev, who also resides in the same rented house where deceased was residing, can give the details of the alleged offence. Thereafter, Investigating Officer recorded the statement of Mahadev (Madho) who told him that on the day of occurrence, he along with his brother had left for their village but other students namely Anil, Krishan Pal, Satendra and Vijendra, who were also tenants of the same house told him that after he returned, that Ravindra, Satendra, Rishipal and Brij Bhushan had came in the rented room of Mahadev and later on killed him. They also told that the aforesaid accused persons also carried away the dead body after wrapping it in a quilt.

5. Thereafter, Investigating Officer recorded statements of Anil and Krishan Pal. Statements of Satendra, Krishan Pal and Anil Kumar were also recorded under Section 164 Cr.P.C. PW-10 SI Om Prakash Tomar arrested four accused persons and illegal knife (Ex. Ka-11), blood stained knife (Ex. Ka-12) and bicycle of deceased was recovered from them. Relying upon statements made by Anil, Krishan Pal and Satendra Pal and from the recoveries made, charge-sheet against accused persons Ravindra, Satendra, Rishipal, Brij Bhushan and Santerpal was submitted by Investigating Officer under Section 302 and 120 IPC. Charge-sheet under Section 4/25 Arms Act was also submitted against accused Satendra.

6. Charges against Ravindra, Rishipal, Santerpal and Naresh were framed under Section 147, 302 read with Sections 149 and 201 of IPC. Charges against Satendra and Brij Bhushan were framed under Sections 148, 149, and 201 IPC. Accused

denied the charges and claimed for trial. 11 prosecution witnesses were examined in support of prosecution story. PW-1 Pitam Singh, father of deceased has proved the contents of written report (Ex. Ka-1). He has identified clothes worn by the deceased at the time of occurrence and proved Exhibits 7 to 11. Apart from it, he has also proved the receipt (Ex. Ka-12) of bicycle he purchased for Harendra.

7. PW-2 Satendra Pal has deposed that both deceased Harendra and accused persons were known to him. He was also a tenant in the house of Jile Singh. Madho and Vijendra were also tenants in the said house. He has further stated that on 26.2.1981 at about 7:45 pm, when he alongwith Krishan Pal and Anil Kumar was cooking food, 6 accused Ravindra, Satendra, Brij Bhushan, Rishipal, Naresh and Santerpal came alongwith Harendra who was holding a cycle. After half an hour, he heard voices coming from the room of Madho. When he along with Krishan Pal and Anil Kumar approached near the room of Madho, they saw from the space through door that Brij Bhushan and Satendra were holding knives and Ravindra and Rishipal were holding clubs. He has also stated that they saw the incident as room was lit with bulb. They were threatening Harendra and were asking him to open his Nara in order to satisfy their unnatural lust. Harendra was offering resistance. Then this witness opened the door and tried to forbade them from doing so. But he too was threatened by accused persons who asked him and his companions to return back or they will kill them. When this witness along with other 2 boys retreated to their room, they were locked inside as accused bolted their door from outside. 15 to 20 minutes afterwards, he saw that all 6 accused persons were carrying away Harendra who was put on a cot and his body was wrapped in a quilt. After about half an hour, they saw a man in the adjacent house and called him to open the bolt of their door. He informed this incident to Madho on next day and returned back to his village. Again he returned to Muzaffarnagar on the very next day and he was interrogated by the Sub Inspector. He has also stated that all the accused persons frequently visited the rented room of Madho. PW-3 Anil Kumar has also deposed the same facts as stated by PW-2 Satendra Pal. Both witnesses have stated that Madho was not present in his room at the time of alleged incident.

8. PW-4 Dr. S.C. Gupta who has conducted postmortem has found following ante mortem injuries on body of deceased :-

"1. Lacerated wound 3" x 1/2" x bone on right side skull 3" above the ear placed transversely.

2. Lacerated wound 1/4" x 1/10" x muscle on right side front of scalp on the hair line.

3. Contusion 1½ " x 1" on right pinna of ear.

4. Contusion 1" x 3/4" on left pinna of ear.

5. Lacerated wound 1½ " x 1/4" x bone on outer part of left eyebrow.

6. Lacerated wound ½" x 1/10" x muscle on left upper eyelid.

7. Lacerated wound ½" x 1/10" x bone on bridge of the nose with depressed fracture of the nasal bones.

8. Abraded contusion 2"x 1" on right forehead just lateral to bridge of the nose.

9. Lacerated wound 3/4" x 1/2" x bone on front of chin.

10. Abraded contusion 3" x 2" on left body of the mandible and area below it.

11. Abraded contusion 13" long encircling the neck all round. The breadth is 2 ½"on left side and 1/2" on right side.

12. Abrasion 1" x 1" on inner end of left collar bone.

13. Multiple abraded contusion in area of 6" x 3" on back of right hand with swelling.

14. Contusion 6" x 1" on outer aspect of right thigh.

15. Lacerated wound 1" x 1/4" x muscle on outer aspect of right thigh middle 1/3rd.

16. Contusion 4" x 2 ½ " on front and upper aspect of right knee.

17. Lacerated wound 1/4 " x ¼" x bone on front right leg upper third.

18. Contusion 4" x 1 ½ "on front of right leg.

19. Lacerated wound 1/4" x 1 /4" x muscle onfront of left leg middle 1/3.

20. Contusion 11" x 2" on front of left thigh upper 1/3.

21. Multiple contusions 7" x 3" on outer aspect of left thigh upper 1/3.

22. Lacerated wound 1/2" x 1/4" x muscle in space between left thumb and index finger.

23. Contusion 3" x 2" on inner side of left forearm lower 1/3.

24. Contusion 10"x 6" on front, top, beck and outer aspect of left shoulder with swelling.

25. Multiple abraded contusions in an area 8" x 4" on beck of right shoulder and right scapular region.

26. Multiple abraded contusion in an area of 8" x 5" On left scapular region.

27. Contusion 4" x 2" on right gluted region."

PW-4 has stated that the deceased died due to shock and haemorrhage as a result of ante mortem injuries.

9. PW-5 Jile Singh was owner of the house where PW-2 Satendra and PW-3 Anil Kumar were tenants. He has stated that he had not rented any room to Madho. He has also stated that Dinesh s/o Daya Ram was also residing as a tenant in his room. PW-6 Ravindra Kumar has proved recovery of illegal knife (Ex. Ka-11), recovery of blood stained knife (Ex. Ka-12), recovery of blood stained quilt cover (Ex. Ka-13), and recovery memo of bicycle (Ex. Ka-14). PW-7 Head Constable Tayyab Hussain has proved chik report (Ex. Ka-15), PW-8 Constable Damber Singh has stated that sealed dead body was handed over to him by SI which was produced by him before the doctor for autopsy. PW-9 Iqbal Singh @ Dharam Pal was declared hostile. SI Om Prakash (PW-10) has given details of investigation and has proved Ex.

Ka-17, Ex. Ka-5 and Ka-6, site plan (Ex. Ka-18), inquest memo (Ex. Ka-2), Statement of Iqbal Singh (Ex. Ka-20), recoveries of knives (mat. Ex. Ka-2 & 3) and other connected documents/materials collected during investigation. PW-11 Mohd. Feyyaz who was the other investigating officer has also given statement before court. Statement of accused persons were recorded under Section 313 Cr.P.C. They have shown ignorance about alleged offence and have also denied their role. They have stated that he was falsely implicated by S.H.O. Om Prakash Tomar and Constable Om Pal due to enmity. False recoveries of knives etc. were made from them.

10. Upon the completion of the trial when the court of Special Additional District Judge, Muzaffar Nagar, by its judgement and order dated 30.1.1984 convicted Ravindra and Rishi Pal for the offences punishable under Sections 147, 201 and 302/149 and Satendra Brij Bhusan for the offences punishable under Sections 148, 201 and 302/149 IPC, the instant Appeal was filed. It may be stated that the accused Santer Pal and Naresh were acquitted of the charges levelled against them.

11. Upon being held guilty the accused persons were sentenced with life imprisonment under Sections 302 read with Section 149 IPC.

12. The convicted appellants Ravindra, Rishipal, Satendra and Brij Bhusan filed the instant Criminal Appeal No. 319 of 1981. During the pendency of the Appeal, the appellants Rishipal, Satendra and Brij Bhusan died. The appeal vis-a-vis them, therefore, abated. Vis-a-vis the appellant - Ravindra the appeal was argued by Ms. Seema Pandey learned amicus curiae.

13. Learned counsel for the appellant made the following submissions:-

I. The eye-witness account of P.W.-2 Satendra Pal and P.W.-3 Anil Kumar was absolutely unbelievable. In their statements they had mentioned that they had heard the accused asking the deceased to open his Nada so that they could commit the act of sodomy. However, from the evidence on record, specially from that of the Investigating Officer, it becomes clear that, in fact, the deceased was not wearing any Payjama but was wearing a bell bottom which does not have a Nada but in fact had buttons. He submits further that the presence of the two eye witnesses could not be established as their entire conduct was unbelievable. They had stated that when they had seen through the chink of the door of Madhav's room, six accused persons were intending to commit the act of sodomy with the deceased, yet they had dared to enter the room. Two of the accused, namely, Brij Bhusan and Satendra were having knives in their hands while Ravindra and Rishi Pal were having sticks in their hands and they were intimidating the deceased to open his Nada so that they could commit the act of sodomy. Learned counsel for the appellant submitted that if the accused were so heavily armed when they were seen by the P.W.-2 and his two friends, namely, Anil Kumar and Kishan Pal then either they would have assaulted them and would have tried to do away with them or they would have themselves run away. For the accused to just drive away, the three eye-witnesses who had seen them committing the crime was very unlikely. Furthermore, it was still more unlikely that they would just lock them in the

neighbouring room by putting a latch from outside.

14. Learned counsel for the appellant further stated that the presence of the eyewitnesses also became unbelievable when they had stated that they had got the latch unlocked after the accused persons along with the deceased had gone away from the site by calling an unknown person in the neighborhood. Learned counsel submits that in the event the person who had been called had opened the latch for the eye witnesses to come out of the room then the first thing they would have done upon having seen such a serious offence being committed that they would have gone to the police to report the matter. Learned counsel further states that the eye witness accounts still further became unreliable as, though Satendra and Anil came to the witness box, Kishan Pal who was also staying in the same room never appeared in the Box. Learned counsel for the appellant submitted that even Madhav in whose room the incident had happened and Vijendra who was living in the neighbouring room never came in the witness box.

II. The case of the prosecution further gets falsified inasmuch as the P.W.-1 had nowhere stated that he had seen six persons, namely, Ravindra, Satendra, Rishi Pal, Brij Bhusan, Naresh and Santer pal committing the crime. In the statements under Sections 161 Cr.P.C. and 164 Cr.P.C., he had only stated that he had seen the accused Ravindra, Rishipal Satendra and Brij Bhusan. However, before the court he had taken the names of two more persons, namely, Santer Pal and Naresh. Learned counsel submits that how Santer Pal and Naresh were connected with the crime was not known at all to the prosecution. He submits that on this account also the testimony of the eye-witnesses of the P.W.-2 and P.W.-3 becomes unbelievable.

III. Learned counsel for the appellant further states that the recovery under Section 27 of the Evidence Act was not done as per the law. In this regard, learned counsel for the appellant relied upon two judgements of the Supreme Court in **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh** reported in **AIR 2022 SC 5273** and in **Subramanya vs. State of Karnataka** reported in **AIR 2022 SC 5110**. No statements of the accused before the recovery was recorded in the presence of two independent witnesses.

IV. Learned counsel for the appellant states that there was no injury of a sharp edged weapon but the recovery had mentioned that knives with blood on them were recovered. Thus recovery also becomes absolutely unbelievable.

V. The entire case of the prosecution was that the six accused persons had taken the deceased to commit the offence of sodomy but nowhere on the body of the deceased any sign of unnatural sex was to be found.

VI. The dead body of the deceased was found in the plots on the southern side of the kutchery and post office. But the incident allegedly had taken place some distance away from the place where the dead body was discovered but no evidence was led as to whether there was blood in the room of Madhav where the incident allegedly took place.

VII. There was no blood at all found at the alleged place of occurrence namely the room of Madhav. If the incident

had taken place in the room, the blood would have been found there.

VIII. Even the testimony of Jile Singh did not inspire confidence as he was not even aware if Madhav was a tenant in his house.

14. Learned AGA Sri Amit Sinha opposed the Appeal and submitted that P.W.-2 and P.W.-3 were giving eye witness accounts which could not be disbelieved lightly. He submitted that it mattered little that there was blood found on the edges of the knives which were recovered even if there was no injury of any sharp edged weapon on the body of the deceased. Learned AGA submitted that not always the accused could have reacted in the way the learned counsel for the appellant argued i.e. they would have definitely continued to commit the murder even when they were caught red hand. He also submitted that it mattered little if no blood was found at the place of incident.

15. Before embarking upon the discussions on evidence, it will be relevant to note that alleged incident which occurred on 26-2-1981 remained offscreen till dead body was recovered on next day and F.I.R was lodged against unknown by P.W.-1 Pitam Singh. Statement of three eye witnesses were recorded by I.O. on 28-02-81. All three witnesses were produced before Judicial Magistrate on 25-03-81 and their statements were recorded u/s 164 Cr.P.C. The prosecution asserts that the testimony of the witnesses is impeccable, and the appellants have failed to present any evidence to impeach them.Appellants contended that conduct of the witnesses, who left for their village on next day without disclosing the incident to anyone, and material inconsistencies in their statements, make them highly unreliable. Before delving into other evidence, it would be prudent to consider the testimony of eyewitnesses first.

16. It's important to note that only two eye witnesses, Satendra and Anil, were produced by the prosecution out of the three witnesses, namely Satendra ,Krishna Pal and Anil. When their statement was recorded under Section 164 Cr.P.C., both of them stated that they were residing in a rented room owned by Zile Singh. Madav,another tenant, was residing in adjacent room.On February 26, 1981, at approximately 7:45 pm, four boys?Ravindra, Satendra, Rishi Pal, and Brij Bhusan?arrived at Madav's room. They were accompanied by the deceased Harendra, who was holding his cycle.Said boys used to visit Madav's room frequently. They unlocked the door and entered Madav's room. At that time, witnesses were busy in cooking their food. They heard some noise of conversation coming from Madav's room. Five minutes later,they heard screams that I will not let do so. They came after hearing the screams and went to Madav's room.

17. They further stated that when they peeped from seam of door, they saw that Brij Bhusan and Satendra were wielding knives and Ravindra and Rishipal were beating Harendra with clubs . They were demanding from Harendra to open strings of his pyjamas to commit sodomy. Harendra was resisting and was crying for help. Braj Bhusan and Satendra were threatening to kill Harendra on knife point. Upon hearing screams, they reached there and entered into the room after getting it opened. However, all the accused pounced upon them and threatened to retreat. Satendra bolted their room from outside.

Twenty minutes later, they saw all the accused carrying Harendra away wrapped in a quilt. An unknown person came there to see Madav and he opened their bolt after they asked for it. They didn't disclose the incident to anyone out of fear except Madav on next day.Another witness, P.W.-3 Anil, has provided a slightly different version of the events in his statement under Section 164 of the Cr.P.C. He stated that the door in Madav's room was locked, and its lock was broken by the accused persons.

18. During trial,P.W.-2 Satendra in examination in chief said that six persons came along with Harendra. When he was confronted with his statement u/s 164 Cr.P.C.during cross examination , he admitted that he hadn't mentioned Santer Pal and Naresh's names to the Magistrate because they were merely strolling outside the room and were not involved in the incident. P.W.-3 Anil has made similar statement in his deposition on this point. P.W.-2 Satendra has stated u/s 164 Cr.P.C that lock of Madav room was opened by accused persons.Contrary to it,P.W.-3 Anil has stated u/s 164 Cr.P.C that it was forced open by accused.Both witnesses have stated u/ s 164 Cr.P.C that they got the door of room opened by accused persons and forbade them to do so. During cross-examination, P.W.-2 Satendra revealed he himself opened the door,doors of Madav's room were not bolted from inside but were left ajar. He said during cross examination that he had not stated before Magistrate that doors were bolted from inside.During cross-examination, P.W.-3 Anil admitted that he couldn't recall whether Madav's door was locked or not. He couldn't recall what he had said before the I.O or Magistrate regarding how the accused persons opened the lock.He also admitted that he couldn't recall his previous statement to the I.O. and Magistrate regarding the door's position. He has denied stating before Magistrate that they got the door opened by accused persons.

19. It seems from statements u/s Section 164 Cr.P.C. that deceased Harendra and other accused arrived at spot in a normal manner. Both witnesses have stated same fact during examination in chief. But during cross examination P.W.-2 Satendra stated that he and Krishna Pal were sitting in their room on a cot and saw from window that five accused were apprehending Harendra. Ravindra was holding Harendra's cycle. Harendra was silent. None had gagged his mouth. None of the accused was holding club or knife. Neither he nor Krishna Pal questioned the accused about there act of grabbing Harendra. On other hand, P.W.-3 Anil has stated during cross examination that none of accused had grabbed Harendra .

20. Both witnesses in their statements u/s 164 Cr.P.C have stated that accused were beating Harendra with clubs. But P.W.-2 Satendra has stated during examination in chief that accused were merely threatening Harendra. When confronted with this statement, he admitted to having made it. Soon he clarified and said that Ravindra and Rishi Pal were beating with clubs. Both of them had stated under Section 164 that the accused bolted their doors from outside before they left spot.They got it opened from an unknown person who arrived there to meet Madav. Both had stated in their examination in chief that accused left the spot after twenty minutes and carried Harendra away in wrapped quilt. P.W.-2 Satendra in his deposition stated that after half an hour, he saw a person strolling on adjacent roof. He called him who unbolted their latch. P.W.-3

had stated in his deposition that a person was strolling on roof of Bhanwar Singh whom they called. He descended and came there and then he opened the latch.

21. As elaborated in the preceding paragraphs, it is evident that the statements of witnesses u/s164 Cr.P.C and their testimony are contradictory. They have stated U/s 164 Cr.P.C that only four accused persons came with deceased. But when they were examined in court,they added names of two more accused persons i.e. Santer Pal and Naresh. When both were confronted on this issue, they stated they had not disclosed their names earlier because latter named accused were only walking outside the room and were not involved in incident. P.W.-2 Satendra has stated in cross examination that he was stopped by these two accused when he was peeping through seam of door. If said testimony of P.W.-2 Satendra along with the role assigned to both accused is relied upon, it will indicate involvement of latter added accused persons. But reasons put forward by the witnesses for not disclosing their names earlier is unacceptable.

22. P.W.-2 Satendra has stated u/s 164 Cr.P.C that accused opened the lock of door, whereas P.W.-3 Anil stated that it was broken by them. Even though P.W.-2 Satendra had said that Madav's room was locked,none of the witnesses have stated in their deposition about the mode of opening lock which reveals that neither they have corroborated nor contradicted their earlier statements u/s164 Cr.P.C. It is admitted fact that Madav was not present in his room where the alleged incident occurred.During cross examination P.W-3 Anil stated he had seen anybody opening the lock and he even doesn't remember whether door was locked or not. He didn't remember whether he had stated before I.O or U/s164 Cr.P.C that accused unlocked the door.In foregoing circumstances, it was imperative for prosecution to explain as how accused got access of the room. Whether they broke the lock or opened it?

23. Both witnesses had claimed in their earlier statements that they got the door opened by accused persons when they found them beating Harendra. However P.W.-2 Satendra had stated during cross examination that door was left ajar and he himself opened it.On other hand, P.W-3 Anil during cross examination stated he had not stated u/s 164 Cr.P.C that they entered room after getting the door opened. Witnesses had earlier stated that the deceased and accused arrived at the spot in a normal manner. However, during cross-examination, P.W.-2 Satendra revealed that the deceased Harendra was brought there in confinement by the accused persons. It's strange that none of the witnesses intervened at that stage but they did so when they heard screams from inside the room of Madav. Both witnesses have stated that the stranger from the neighbourhood's roof arrived at the spot to meet Madav and opened their door, as per Section 164 Cr.P.C. However, they have contradicted this in their depositions, claiming that he arrived there after being called by them.It is trite that Statement under Section 164, Cr. P.C. is not a substantive piece of evidence but can be used for the purpose of contradiction or corroboration as provided under Section 145 of the Evidence Act. The purpose of contradiction between evidence of a witness before the court and the statement recorded under section 164 of the Code is primarily to shake credit of the witness and to put the court on guard to scrutinize the evidence with great care. In this case ,bare comparison of statements

made by witnesses u/s164 Cr.P.C and their deposition before court reflects that they are not consistent even on single point. There is no plausible explanation as to why names accused Santer Pal and Naresh were disclosed for first time during trial. Witnesses are not firm on any point like whether door of Madav was opened by the accused or lock was broken. Similarly they have made contradictory claims about the manner in which deceased Harendra and accused reached the spot. There statements under Section 164 Cr.P.C reflects that all arrived there in normal manner. Contrary to it, P.W.-2 Satendra has also stated that deceased was brought there in confinement. P.W.-2 Satendra had stated during examination in chief that accused were only threatening deceased which is entirely different from the prosecution story. Similarly both witnesses claimed in their earlier statements that they got the room opened when they heard screams. But they stated in their deposition that the door was left ajar. Like wise, they stated u/s 164 Cr.P.C, that a stranger from has himself came and opened their door,whereas they stated during deposition that they called him .

24. Minor and immaterial inconsistencies and/or discrepancies shall not harm the case of the prosecution. But if testimony of prosecution witnesses is in variance with his earlier statements,particularly statements made under Section 164 Cr.P.C, his testimony comes under cloud of suspicion. Testimony of either witness is not firm on manner of occurrence.

25. Every criminal act, especially those committed against the human body, involves preceding facts that occurred shortly before the act, along with the actual commission of the offence. Similarly, some acts occur shortly after the occurrence of the offence. It is expected that witnesses will be consistent in their testimony when they unfold aforesaid events. It is evident that both witnesses have made improvements in their testimony on each count. Such improvements can not be brushed aside by terming them as minor contradictions. These improvements are material improvements. Similarly, admission by witnesses that they did not inform about the incident to any one except Madav is strange and unnatural. Both had admitted in cross examination that they got information about recovery of dead body on next day at about 11:00AM when they were going to their college. Even P.W-2 Satendra has stated that he left for his village on next day. Both witnesses have stated that they did not inform the incident out of fear. Said explanation is unnatural and unsatisfactory. Hon'ble Supreme Court in **Chanan Singh vs. State of Haryana, 1971 SC 1554** held in paragraph 13 that the conduct of witnesses in keeping away from the place of occurrence even though he was not chased or threatened and yet remained silent and did not report the incident even to the relatives of either of the two deceased person was abnormal behaviour. Similarly, Hon'ble Supreme Court in **State of Orissa vs. Mr. Brahmananda Nanda AIR 1976 SC 2488** held that if a witness says that incident was not disclosed out of fear cannot be believe unless accused persons are known gangster or a confirmed criminal about whom people would be afraid.

26. Apart from that, statements recorded under Section 164 Cr.P.C were made a month after the incident.Such a long delay in recording the statements of the witnesses speaks much. Hon'ble

Supreme Court in **Firoz Khan Akbarkhan vs. The State of Maharashtra, 2025 LiveLaw (SC) 349** has held," No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in Ganesh Bhavan Patel v State of Maharashtra, (1978) 4 SCC 371?" it further held that," Thus, stricto sensu, delay in recording witness statements, moreso when the said delay is explained, will not aid an accused. Of course, no hard-and- fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code." Here witnesses were accessible to I.O and he also recorded their testimony u/s 161 Cr.P.C. But neither the testimony of witnesses nor of I.O has come forward with any explanation from which inference as to cause of delay can be deduced. Such a long delay in recording the statement of witnesses speaks much.

27. From the foregoing circumstances, it is difficult to hold that alleged occurrence was witnessed by these witnesses. The manner in which investigation was carried out also casts serious doubts. Blood stained soil was collected from the place where dead body was recovered. Recovery of blood stained quilt cover was also made. But I.O has not found blood stains on place of occurrence. It is difficult to assume that no blood stain was found at the spot even when so much of blood has oozed in the occurrence. Similarly alleged cycle said to in possession of deceased Harendra was recovered on pointing of accused Braj Bhushan. Ravindra and Anang Pal were made recovery witnesses. Said cycle Mat. Ex-1 was produced before court and was identified by Ravindra and Anang Pal. Father of deceased, PW-1 Pitam Singh, was available on the next day when FIR was lodged by him and he was the best person to identify the said cycle. But identification of the said cycle by aforesaid witnesses itself makes the recovery doubtful. Blood stained knife was also recovered from two accused Ravindra and Satendra. This recovery itself is strange as P.W.-4 Dr S.C. Gupta has stated that all injuries were caused by batons. Testimony of eye-witnesses which does not inspire confidence, coupled with recoveries that contradict substantial evidence rather than corroborating it, cannot be relied upon for convicting appellants. Prosecution has miserably failed to prove its case beyond reasonable doubt.

28. Under such circumstances, we are of the definite opinion that the appeal deserves to be **allowed**. In this view of the matter, the judgement and order dated 30.1.1984 passed by the Special District Judge, Muzaffar Nagar is quashed and the appeal is **allowed**. The appellant no. 1 is acquitted of the charges who alone is now alive. The appellant no.1 is already on bail. Sureties and bail bonds are discharged. Further directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two month from today.

29. The learned Amicus Curiae, Ms. Seema Pandey, be paid a fee of Rs. 15,000/-. The Registrar General to oversee the payment.

30. The Trial Court's record be remitted back along with copy of this judgment.

31. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

(2025) 9 ILRA 87
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 11.09.2025

BEFORE

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

Criminal Appeal No. 1201 of 2014
&
Criminal Appeal No. 1359 of 2017

Surya Lal @ Shiv Lal ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Amjad Siddiqui, Amul Mani Tripathi, Mohemmed Amir Naqvi, Piyush Kumar Singh, Shreesh Kumar Mishra Alat, Shubham Gupta

Counsel for the Respondent:
Govt. Advocate

Issue for Consideration

The appeal revolves around the specific point challenging the conviction-(a) Whether the Trial court committed a manifest illegality by recording a finding of conviction based on surmises and conjectures-(b)Whether the recovered knives were capable of causing the fatal injuries-(c)Whether the recovery of clothes and weapons was doubtful.

Headnotes

A. Criminal matter-Criminal Procedure Code, 1973-Section 374(2)-Indian Penal Code,1860-Sections-Contradiction between Medical and Weapon Evidence-This contradiction created a fundamental doubt about the prosecution's story and recovered evidence-Doubtful recovery-The prosecution failed to produce any independent public witnesses to the recovery memo, making the recovery suspect-Unreliable Identification of the accused inside a dense reserve forest – The defective investigation and numerous contradictions led to the accused being given the benefit of the doubt-Appeal allowed.

Held

The court found The medical officer stated that the fatal injuries were likely caused by a heavy sharp-edged weapon-However the prosecution's case rested on the recovery of small knives with 7-8 inch blades from the accused-The police failed to produce any independent public witnesses to attest to the recovery of the alleged weapons and blood-stained clothes-non-production of independent witnesses was unexplained-The eyewitness (PW-1) claimed to have identified the accused but the time, location, and conditions made the identification of the accused by the sole eyewitness highly improbable and doubtful.(Para 47 to 86) (E-6)

Case law Cited

Vadivelu Thevar Vs State of Madras AIR 1957 Supreme Court 614,Jagdish Prasad Vs State of Madhya Pradesh AIR 1994 Supreme Court 1251, Sonvir @ Somvir Vs State NCT of Delhi (2018) 8 SCC 24, Prakash Vs State of Karnataka (2014) 12 SCC 133
Sujit Biswas Vs State of Assam (2013) 12 SCC 406, Hanumant Govind Nargundkar Vs State of M.P. AIR 1952 Supreme Court 343, State Vs Mahendra Singh Dahiya (2011) 3 SCC 109 & Ramesh Harijan Vs State of UP (2012) 5 SCC 777,Kali Ram Vs State of Himachal Pradesh (1973) 2 SCC 808-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Medical officer, fatal injuries ,heavy sharp-edged weapon, recovery accused, independent public witnesses, recovery of the alleged weapons, blood-stained clothes, non-production of independent witnesses, dense forest, recovery memo, investigation.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 1201 of 2014
From the Judgment and Order dated 11.09.2025 of the High Court of Judicature at Allahabad.
Surya Lal@Shiv Lal Vs. State of U.P.

Appearances for Parties
Adv. for Appellant(s)
Amjad Siddiqui, Amul Mani Tripathi Mohemmed Amir Naqvi, Piyush Kumar Singh, Shreesh Kumar Mishra Alat, Shubham Gupta
Adv. for Respondent(s)
Govt. Advocate

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

1. Heard Sri Shreesh Kumar Mishra Atal, Advocate for the two appellants as Amicus appointed by the High Court and learned AGA for the State Respondents.

2. These two criminal appeals have been filed against judgement and order dated 07.08.2014 passed by Additional Sessions Judge, Bahraich in Session Trial No. 49 of 2002, State of U.P. Vs. Surya Lal and Another arising out of Case Crime No. 69 of 2001, Police Station, District Bahraich, where by the Trial Court has convicted and sentenced the appellants under Section 302/34 IPC for life imprisonment with fine of Rs.10,000/- in default of which for further imprisonment of one year, and under Section 353 IPC for two years imprisonment and under Section 201 IPC for three years, imprisonment and fine of Rs.5,000/- and additional imprisonment of six months in case of default in payment.

3. Case Crime No. 69 of 2001 was initially registered in Police Station – Sujauli, Bahraich on 06.08.2001 at 06:10 AM against three accused, all residents of Ishwari Ganj Nepal, the informant did not reveal any names. He only indicated that one of them belonged to the family of Ramswaroop Tharu, the other was a relative of Purinder Tharu and the third one was an unidentified fellow. It was stated in the written report dated 06.08.2001 that on 04.08.2001 Forest Guard Jitendra and Watcher Kallu were returning from their duty in Beat no.2 of Katarniya Ghat Range. Near No Man's Land Ishwari Ganj village, they found two boys reading a book. Forest Guard Jitendra questioned them and scolded them by saying that these people keep a watch on movement of Forest Guards by making an excuse of reading books, only to warn their accomplices who were indulging in illegal felling and selling of trees in the forest. The informant said that he, Nanmoon, was working as Forest Guard in Beat No.1 and on 05.08.2001 while returning from his Beat, he met Jitendra Lala Forest Guard and Kallu Watcher on the road also coming back to forest checkpost on their cycles. All three were then returning together when they were accosted by the accused, who were armed. They took them inside the jungle about two kilometres and then threatened and scolded Jitendra Lala for slapping them last evening. They forced him to take off his clothes and they tied his hands as well as there of Kallu Watcher and the informant. One of the accused then took Jitendra Lala aside and stabbed him repeatedly. Another accused then took Kallu Watcher aside and stabbed him to death, but let the informant go on his begging them to spare his life. He came back to his check post and told Nathuram Forest Guard about it and then both of them crossed the river and reached the Forest Range Office where he told everything to Dy. Range Officer Sri Abdullah who then came to the Police Station to lodge FIR.

4. The Investigating Officer did not try to find out the names of the accused till the night of 13.09.2001 when the three accused Surya Lal, Chankau and Harichanda and two others were arrested for illegally cutting down a tree. It was thereafter that weapons of assault were recovered and charge sheet was filed and the Sessions Trial commenced.

5. Harichanda was declared juvenile by order of the Sessions Court on 24.07.2012. His case file was separated. Surya Lal and Chankau were tried and convicted.

6. The Trial Court examined eleven prosecution witnesses. Three were officials belonging to the Forest Department, two were Medical Officers, and the rest were Policemen.

7. P.W.1 and P.W.2, Nanmoon and Dashrath Forest Watchers, have been treated as witnesses of fact alongwith P.W.3, Abdullah the Deputy Forest Ranger, who had written the FIR. Dr. Ajay Kumar Tiwari, P.W.4 was the Doctor on duty when the victim Jitendra Singh Srivastava was brought in for treatment. Dr. M.R. Mallik P.W.6 and P.W.8 Dr. Saiyyad Ashraf Hussain were Medical Officers, who had conducted the postmortem of the two deceased Jitendra Srivastava Forest Guard and Kallu Watcher. P.W.5 M.Z. Khan was in-charge of Special Operation Group Team, P.W.7 was Constable Moharir, S.I. Digvijay Singh as P.W.9, S.I. Sreenivas Chaudhary as P.W.10. and S.O. Jitendra Kumar Kaushal as P.W.11 were the three Investigating Officers.

8. Nanmoon, the first informant, stated that he was illiterate and therefore, he dictated the FIR to Abdullah Khan, the Deputy Ranger, who wrote it down on a piece of paper before it was submitted in Sujauli Thana on 06.08.2001 at 6:10 AM. Nanmoon P.W.1 stated that on 05.08.2001, while he was returning from his Beat No.2 Katarniya Ghat Range, he met Jitendra Lala Forest Guard and Kallu Watcher on the way as they were returning from Beat no.1. This was around 07:00 PM. When all of them were riding their bicycles towards their Check Posts they met three people on the way, two of them were carrying guns and the third had a knife. These three people caught hold of Jitendra Lala, Kallu and the informant Nanmoon and confronted Jitendra Lala saying that he had scolded them and slapped them last evening, that is on the evening of 04.08.2001, and he should not have done so. They pointed the gun in their hands towards the victims and they tied their hands with rope made of Baint (Rattan) and threw away their cycles, and then disrobed Jitendra Lala. Surya Lal took him aside and tried to shoot him down, but his gun malfunctioned, and he took out his knife and repeatedly attacked Jitendra Lala until he fell down. Surya Lal returned to the place where Kallu Watcher and Nanmoon were standing, and then Chankau took Kallu Watcher some distance away in the opposite direction and also attacked him repeatedly with his knife which resulted in instant death of Kallu Watcher. P.W.1, then stated that he begged the assailants to leave him, and they decided to untie his hands and left him and went their way towards the No Man's Land. P.W.1 took his cycle and came to the check post where he told the story to Nathuram Forest Guard and they decided to inform the Range Office across the River. They took a steamer to cross the river and reached the Range Office where P.W.1 told his ordeal to Abdullah Khan, Deputy Ranger, who wrote it down and it was

given to the S.H.O. Sujauli on 06.08.2001 in the morning.

9. P.W.1 stated that there were two check posts near the No Man's Land. On each there were employees of the Forest Department, who had their service guns/12 Bore guns given to them by the Government. P.W.1 was posted in Beat No.1 check post with Forest Guard Nathuram Tripathi and Watcher Ghasite. In the check post on Beat No.2 Forest Guard Jitendra Lala, and Watcher Kallu along with Dashrath Watcher were posted. Jitendra Lala had kept one more Watcher Dashrath also with him.

10. On a specific query being made, P.W.1 stated that while going to inspect their Beat, they do not carry any weapons. It is only when they received information with regard to illegal felling of trees that they take their guns along with them. All weapons in the check post are under the control of Forest Guard. Being Watchers only they cannot take any guns without the permission of the Forest Guard. Only when Forest Guard and Forest Rangers move on Inspection, they take their weapons along with them. P.W.1 also admitted that in No Man's Land on the Indian side, there is a PAC outpost also with 20 persons posted. This PAC output also had facility of wireless at the time of the incident. The Forest Check Post is about 3 kms. away from the PAC outpost. Ishwari Ganj and Karmohini villages in Nepal are around 3 kms. away from No Man's Land.

11. P.W.1 in his cross-examination stated that he goes on Inspection every one or two weeks during which he meets wild animals and mafia and most of the times, the wild animals move away when he fires from his gun in the air. They used to fire guns in the air also when they came across forest mafia. P.W.1 further stated during his examination-in-chief that he had been working in the Forest Department for more than 20 years, but had not caught any person doing illegal felling and the only time he had been part of an operation for catching forest mafia was around one month after the incident, when S.H.O. and other Police persons had visited the Range Office at night on 13.09.2001 and were told by Nathu Ram Forest Guard about illegal felling being done near his Beat No.1. The Police personnel along with Forest Department officials in the Range Office at Katarnia Ghat, crossed the river in the dead of the night and reached the PAC outpost and took all persons from the PAC outpost also while laying ambush on persons illegally felling trees in the forest near Ishwari ganj. When they reached the spot at around 02:00 AM, the Police warned the mafia not to try to run away as they had been surrounded. Thereafter, five people were caught doing illegal felling, he recognised three of them as the assailants of Jitendra Lala and Kallu Watcher. It was then that P.W.1 came to know their names as Surya Lal, Chankau and Harichanda. P.W.1 also stated that he was witness of the recovery made by the Police of cycles and clothes of the deceased and weapons of assault i.e. two knives that were buried in the soil.

12. P.W.1 also stated that workers were often called by the Forest Department from Karmohini and Ishwari Ganj villages in Nepal and Dashrath Watcher had his second wife's parents living in Karmohini Village Nepal. Dashrath Watcher had been working since 1986–87, in Katarnia Ghat and he used to regularly visit his wife's village in Nepal. The Range Office has three Foresters, one Range Officer, one

Deputy Ranger, one Forest Guard and four to five Watchers. The Range Office is equipped with firearms and as are all Forest Check posts where one Forest Guard and two Watchers are posted. All Watchers and Forest Guards/employees of the Forest Department are given training to how to use firearms. There is a wireless set available in the Range and one can talk to another Range on this wireless set. The D.F.O., Bahraich office also had a telephone connection.

13. On repeated cross-examination P.W.1 stated that, although Forest Check Posts in all Beats have 12 bore rifles, and the Range Office also has guns, they are not being carried by Forest Guards and Forest Watchers on routine Beat inspections. P.W.1 admitted that he had only caught one Sadhu Tharu some four years ago, committing theft of forest produce. Sadhu Tharu belonged to Nepal Ganj. No Man's Land is land between India and Nepal borders. Beat No.1 and Beat No.2 are inside the forest on the Indian side. The road between Beat No.1 and Beat No.2 is around 12 ft. wide and it leads to the Forest Check Post. P.W.1, along with Jitendra Lala and Kallu Watcher was stopped near Ghalghala Nala by three people/assailants. At that time, P.W.1, Jitendra Lala and Kallu Watcher had only Lathis/sticks in their hand, whereas the three assailants had two guns and a knife. Because of the gun barrel being pointed on Jitendra Lala's face they stopped, and the three assailants tied their hands behind their backs and made them sit under a tree. Surya Lal then took Jitendra Lala some 02 Km. away and then returned some 15 minutes later. Chankau thereafter took Kallu Watcher in the opposite direction and returned 15 minutes later.

14. P.W.2 Dashrath in his examination-in-chief had stated that on 04.08.2001, he was accompanying Forest Guard, Jitendra Singh Srivastava and Kallu Watcher during their inspection in Beat No.2. They found two boys sitting in forest land near Ishwari Ganj Village and reading books. The Forest Guard Jitendra Lala had asked them why they were sitting there and scolded them and made them go away. On walking a few paces they met another Forest Watcher, who told them that these boys were helping in illegal felling by keeping a watch and raising a warning on approach of Forest Guards. On coming to know of this, Jitendra Lala had called the two boys back, who told their names as Surya Lal and Harichanda and they were questioned and slapped by Jitendra. The very next day, Jitendra Lala and Kallu Watcher were killed in the forest. P.W.2 also stated that he had been working in Beat No.2 Katarnia Ghat since 1988 and his wife's name was Jayanti Devi and she belonged to Karmohini village, P.S. Rajapur Mandi, District Bardia in Nepal. Karmohini and Ishwari Ganj villages were situated next to No Man's Land.

15. P.W.2 denied any relation of his wife with the accused, who were also residents of Nepal. He also stated that his wife had not gone to her maternal home for nearly one year after the incident. P.W.2 however later during cross-examination denied having seen Jitendra Lala and Kallu Watcher scolding and slapping the accused Harichanda and Surya Lal on 04.08.2001. He denied the suggestion of Police having interrogated him with regard to the incident at any point of time.

16. P.W.3 Abdullah Khan, Deputy Ranger, Katarnia Ghat Range, stated in his deposition that on 13.09.2010, the S.H.O.

Sujauli Jitendra Kumar Kaushal along with Sub-Inspector Shreenivas Choudhary and Constables and S.O.G. In-charge M.Z. Khan along with other persons had reached the Range Office on a jeep. They told Range Officer, Rajendra Prasad that secret information had been received regarding illegal felling taking place on the other side of the river. All persons from the Range Office then accompanied the Police and S.O.G. team to PAC outpost on the banks of the Gerua River and then reached the place where they could hear the noise of felling of trees. There were around thirty persons in the team by the time they reached the place. They surrounded the place and caught five persons along with their saws and axes and they disclosed their names as Surya Lal, Harichanda, Chankau, Haule and Hariram. Nanmoon Watcher identified three of them as those who had attacked and killed Jitendra Singh Srivastava Forest Guard and Kallu Watcher on 05.08.2001. The three accused admitted to their crime. They also expressed the willingness to show the place where they had hidden the cycles, clothes of the victims and their knives. At dawn, two independent witnesses, Ameere and Ghasite, were taken along with the accused near Ghalghala Nala where the accused took out the cycles of the victims and their clothes from the bushes,as well as two knives, that they had buried under the ground.

17. P.W.3 also stated that Forest Guards have 12 bore guns with them and Foresters and Rangers have rifles. All of them are trained to handle such arms. However, P.W.3 could not tell the number of rifles and guns available in Katarnia Ghat Range Office. He further stated that there was no four wheeler in the Range Office at the time of the incident and they had to walk to the river bank. The Range Office is around 1 Km. away from the banks of the river Gerua. They had crossed the river by using boats. Nathuram Tripathi, Forest Guard had told them about illegal felling of trees in the Range Office. After crossing the river, they walked for around one to one and a half kms before they reached the place where the felling was being done. On crossing the river Gerua, there is a 10 feet wide forest road constructed up to No Man's Land on the border, which is used by people very often for coming to India and going to Nepal. P.W.3 admitted that before such raid on 13.09.2001, or even thereafter, no such raid was carried out in Katarnia Ghat Range to nab any forest mafia.

18. During cross-examination, P.W.3 stated that on 05.08.2001, and 06.08.2001, he was posted in Katarnia Ghat Range Office, but he was on leave some two to three days earlier to the incident and returned on duty one or two days later. He also stated that there was a road between Beat No.1 and Beat No.2, which led to Rajapur in Nepal. Ishwari Ganj Village was half a kilometre from No Man's Land, on Nepal border and was around 3 kms from the Forest Check Post. The team conducting the raid on 13.09.2001 had not been told about why they were going to Beat No.2. On reaching the place on foot where illegal felling was being carried out, they surrounded it and caught five persons of whom three were identified by Nanmoon Watcher as the ones who had attacked and killed Jitendra Lala and Kallu Watcher. These three were taken straightaway to the Police Station by the S.H.O. The other two persons, who were caught were taken to the Range Office as accused in forest offence. P.W.3 also stated that at the time of their arrest, no arrest memo was prepared by the Police.

19. P.W.4 Dr. Ajay Kumar Tiwari was the Medical Officer on duty in District Hospital - Bahraich where Jitendra Singh Srivastava was admitted at 09:00 AM on 06.08.2001 in a serious condition. He died soon thereafter at 09:15 AM. The news regarding death of Jitendra Singh Srivastava was sent to the Police Station through a Ward Boy.

20. P.W.5 M.Z. Khan Inspector, was In-charge of S.O.G. team he along with Jitendra Kumar Kaushal S.H.O. P.S. Sujauli had accompanied the Police and S.O.G. team to Katarnia Ghat Range Office, where they took Forest Guards and Forest Department Officials and reached the banks of River Gerua, which they crossed on a steamer to reach the other side. They found a PAC Check Post where there was one Subedar and four Constables. All of them then walked to the place where they found illegal felling being done. It was around 01:30 AM. He also stated the same story regarding P.W.1, recognising three out of the five persons caught as those who had attacked and killed Jitendra Lala and Kallu Watcher. He gave the names of two independent witnesses as Amir Hasan S/o Ghasite and Munnawar Ali S/o Kalute residents of Katarnia Ghat who accompanied them in the morning, when the recovery of assault weapons and belongings of the deceased were made.

21. While P.W.3, Abdullah Khan, Deputy Ranger, in his examination has stated that the S.O.G. team along with Police team had come to Katarnia Ghat Range office at around 9:00 PM on the night of 13.09.2001, the S.O.G. team In-charge P.W.5 M.Z. Khan stated that they had not gone to Katarnia Ghat Range Office. They had reached the banks of the Gerua River where they were met by the forest team led by Rajendra Srivastav Range Forest Officer, who told them regarding illegal felling. They then crossed the river together on the Forest Department steamer and reached the PAC outpost. The PAC Constables also joined them and a total of 29 to 30 people then walked stealthily to the place where the felling was taking place and surrounded the accused. They reached the place at around 01:30 AM in the morning. It is 2 kms. away from Ishwari Ganj Village on Nepal border. They could hear the accused talking and cutting down a tree from about a fifty to a hundred meters distance. He also stated that they remained in the forest with the accused after arrest for around four to five hours till dawn, and then the accused took them to the place where they had hidden the belongings of the deceased and the weapons of assault. After arrest, the accused were not taken to the Forest Range Office but to Sujauli Police Station at around 10:00 AM in the morning on 14.09.2001.

22. P.W.6 Dr. M. R. Mallik had conducted the postmortem of Jitendra Singh Srivastava on 06.08.2001. There were six incised wounds two on the face and neck, one on the collar bone and two in the abdomen and one incised wound on the left hand. Such wounds were caused by sharp edged weapons. He also stated that Injury No.1 and Injury No.2 could have been caused by a heavy sharp edged weapon like an axe/farsa or a Gandasa as they were deep and had cut through the bones as well.

23. P.W.7 Head Constable Mohit Yadav was posted as Head Moharrir. He verified the chik FIR lodged at P.S. Sujauli at 06:10 AM on 06.08.2001. The G.D. entry was done by Sub-Inspector, Srinivas

Chaudhary as he was In-charge of the Police Station at the time and the S.H.O. Digvijay Singh was on leave. After lodging of FIR, information was given on RT set to the higher officers. Special report to the Magistrate was sent at 06:15 AM on the same day. This witness has stated that Nanmoon P.W.1 and Abdullah Khan had both come to the Police Station on bicycles to lodge the FIR.

24. P.W.8 Dr. Syed Ashraf Hussain stated that he was Medical Officer on duty on 07.08.2001 when the body of Kallu Watcher was brought in for postmortem by Constable Ram Ratan Yadav and Constable Mahant Yadav. The death had occurred around one and a half days ago. The body was covered with maggots. It had decomposed and the skin had left the bone and disintegrated at some places. There were six incised wounds all on the face, around the neck, upper part of the body, on the thorax and cutting through trachea, vertebral column, carotid artery, jugular vein and food pipe.

25. P.W.8 was recalled for cross-examination, and he stated that the nature of the incised wounds on Kallu Watcher's body were such that they might have been caused by Farsa, Gandasa or Kanta, a heavy sharp edged weapon and not by a knife as a knife may cause a punctured wound.

26. P.W.9 Digvijai Singh Sub-Inspector was In-charge, Sujauli Police Station at the time of the incident, but he had gone on leave, and therefore, the investigation was initially carried out by S.I. Sreenivas Chaudhary. He took over investigation with effect from 09.08.2001. He was transferred out of Sujauli Police Station on 19.08.2001.

27. P.W. 10 Sreenivas Chaudhary took up investigation on 06.08.2001. He stated that he had accompanied Forest Department employees to the place of the incident and recovered the dead body of Kallu Watcher and conducted inquest. He also took blood stained soil and plain soil from where he had found the dead body of Kallu Watcher and made a site plan of the scene of crime. He also took blood stained soil and plain soil from the place where Jitendra Srivastava the injured had been lying, on the pointing out of Forest employees. However, he did not find Jitendra Srivastava at the scene of crime and he did not try to find out the whereabouts of Jitendra Srivastava, who perhaps was taken to the hospital by forest employees. He also did not collect any papers about the inquest and postmortem conducted on the body of Jitendra Srivastava. He handed over the investigation to Digvijai Singh on his return from leave on 09.08.2001.

28. P.W.10 stated the same story with regard to accompanying the SOG team and Forest Department Team and PAC personnel to the forest, where they discovered five persons illegally trying to cut a sheesham tree. It took the Police, the SOG Team, the Forest Officials and PAC personnel 5 to 6 hours to reach the place where illegal felling was being done. They reached the place at around 01:30 AM and surrounded the persons cutting the tree and caught five of them.

29. P.W.10 also admitted that he made no efforts to go to Ishwari Ganj Village to find out about the relatives of Ramswaroop Tharu and Purinder Tharu, whose mention had been made in the FIR by the first informant. He was in charge of the investigation only for three days. He,

however, accompanied the Police Team that went on 13.09.2001 to Katarnia Ghat and found five persons, who were illegally cutting trees with their equipment. P.W. 10 stated that they had started in the evening of 13.09.2001 and reached the Range Office at around 09:00 to 10:00 PM from where they walked to the place where Nathuram Tripathi, Forest Guard had stated illegal felling to be taking place. P.W. 10 also stated that the Forest Department had made some noting with regard to recovery of axe and saw from the five people they had caught on the night of 13.09.2001. They reached the Forest Department Check Post at around 03:00 AM in the morning of 14.09.2001 and reached the Police Station at around 10:00 AM. Three of the accused, who had admitted their involvement in killing Jitendra Srivastava and Kallu Watcher, were taken to the Police lockup . The remaining two were handed over to the Forest Department employees to initiate proceedings against them for forest offence.

30. P.W.11 Jitendra Kumar Kaushal S.H.O. had taken over the investigation after Digvijai Singh on 26.08.2001. The Case Diary contained the statements of almost all witnesses. However, on 30.08.2001, D.W.11 recorded additional statements of the first informant, P.W.1 and of Dashrath P.W.2. He also recorded statements of Smt. Jayanti Devi and her husband Bhukali. He accompanied the Police Team along with SOG Team and Forest and PAC personnel on 13.09.2001 in the raid which led to arrest of three accused along with two others who were charged with forest offence later on for illegally felling trees in the reserved forest. P.W.11 stated the same story regarding the incident of 05.08.2001, and of 13.09.2001 as told by other prosecution witnesses. The recovery/arrest memo was dictated by P.W.11 and noted down by P.W. 10. The site plan of the place of arrest of the accused on 13.09.2001 was drawn up by P.W.11. He had also noted the statements of the accused, and of S.I. M. Z. Khan In-charge of SOG team, constables accompanying them, Range Forest Officer Rajendra Kumar and Deputy Range Officer Abdullah Khan on 14.09.2001 and 15.09.2001.

31. Charge sheet was submitted by P.W.11 on 07.10.2001 in the Trial Court. The two knives recovered as the weapons of assault was sent by him along with other material evidence to the Forensic Science Laboratory on 01.03.2002.

32. During cross examination by the counsel for defence, P.W. 11 admitted that the names of the three accused were revealed to him by Nanmoon and Dashrath and his wife, when he had recorded their additional statements on taking over the investigation. He, however, made no correspondence with his superiors to enable him to go to Ishwari Ganj and Karmohini villages in Nepal from where the accused had reportedly come. He did not make any effort to track the accused to their villages. It was only by chance that on 13.09.2001, while conducting inspection on Indo-Nepal Border along with SOG team, he came to know of illegal felling in Katarnia Ghat Beat No. 1 and then caught the three accused along with two others.

33. After conclusion of the evidence of prosecution, the statement of the accused was recorded under Section 313 of the Cr.P.C. wherein they denied all the evidence produced by the prosecution and claimed that they had been falsely implicated and that they were not present on the spot.

34. The defence Advocate had argued before the Trial Court that since the forest mafia had killed two Departmental officials there was huge public pressure and also from the authorities on them to somehow solve the case and the accused being innocent Nepali citizens had been called from their Village and locked up at the Police Station and the raid which took place on 13.09.2001 did not actually happen.

35. The learned Amicus Curie for the appellants has submitted that the Trial Court has committed a manifest illegality in appreciating the evidence available on record and has recorded a finding of conviction on the basis of surmises and conjectures. All the witnesses were official witnesses, who were interested in seeing conviction of accused as there was great pressure from the authorities to solve the case. Therefore, the Trial Court has committed an illegality in accepting their evidence as truthful.

36. It was further argued by the learned counsel for the appellants that as per the opinion of the Medical Officer, who conducted the postmortem of the deceased, the injuries were such as would have been caused by a heavy sharp edged weapon, like a Pharsa, Gandasa or Kanta and it was doubtful that the injuries were caused by simple knives which though have sharp edges were too light to have caused such deep wounds. The Trial Court has not considered this aspect of the matter in a correct perspective.

37. It has also been argued by the learned Amicus that independent witnesses were shown to be present on the spot when recovery memo was prepared of the clothing and other belongings of the deceased and the weapons of assault. However, they have not been produced before the Trial Court. It has further been submitted that the FIR of the case has been lodged ante-timed and in fact nobody had seen the incident and only with the purpose of solving a blind case of murder, the departmental officials have implicated the appellants. There are material contradictions and embellishments in the evidence of the prosecution witnesses and the Trial Court has failed to notice such discrepancies and relied on evidence of such untrustworthy witnesses. The appellants are entitled to be acquitted.

38. The learned counsel for the appellants argued that P.W.1 at different places has given different statements. Initially, he had stated that two of the assailants, who stopped them were carrying guns and one was carrying an iron road. At another place, he has stated that two were carrying guns and one was carrying a knife. Also at one place, P.W.1 stated that PAC outpost was 03 Km. away, it had a wireless set and armed Constables on duty. However, at another place he stated that there was no PAC outpost near the place where the accused had stopped and attacked them. P.W.1 did not initially say in his deposition that after reaching check post of Beat No.1 and narrating the incident to Nathuram Tripathi, they went to the Range Office. In the Range Office there were several persons including the Ranger, Rajendra Kumar and Deputy Ranger Abdullah. Besides Foresters, Forest Guard, and Forest Watchers, but none of them attempted to inform the Police or send information to the adjacent Range's Office through wireless set which was functioning. He also did not say that the employees at the Range Office had initially gone to the place where Jitendra Lala had

been attacked. Kallu watcher was found dead while Jitendra Lala was found in a serious condition and was taken to hospital on the night of 05.08.2001.

39. During the course of cross examination of other prosecution witnesses, it has come out that after P.W.1 disclosed about the incident at the Range Office, the Ranger and Dy. Ranger along with some fifteen to twenty people had reached the place of incident by crossing the river on a steamer. It has also come out that P.W.1 did not accompany the Deputy Ranger to the Police Station- Sujauli for lodging of the FIR. The Police Station was only half an hour away from the Range Office by jeep. After the lodging of the FIR, the police had kept P.W.1 and P.W.2 Dashrath Forest Watcher and Bhukali Forest Watcher for fifteen to twenty days in the Police lock up and interrogated him as they did not believe their story. P.W.1 also stated that he did not know the names of the accused till the time of their arrest on 13.09.2001, when they themselves told their names to the Police and S.O.G. team, who had caught them however in his additional statement to S.O. Jitendra Kumar Kaushal, the third Investigating Officer, he had indeed told the names of the accused.

40. It has been argued by learned counsel for the appellants that it is difficult to believe that three well built Forest Guards and Forest Watchers were stopped on the main road to Nepal Ganj, which is quite a busy road, by three young men and killed with no witnesses, except P.W.1 to have seen the incident.

41. It has also been argued that the motive that has been disclosed by the official witness P.W.1 is hearsay and P.W.2, Dashrath Watcher is too weak a motive for the accused to kill the victims and it may also be tainted by personal enmity as Dashrath and Bhukhali Forest Watchers, who were accompanying the team that caught the accused, were both residents of Nepal and Bhukali's wife belonged to the same village from where the accused hailed.

42. The Trial Court has glossed over several discrepancies and contradictions in the prosecution story. It has been stated in the prosecution story as narrated in the Trial Court judgement that on 13.09.2001, Jitendra Kumar Kaushal, Station House Officer, along with one Constable and one Sub-Inspector Sreenivas Chaudhary accompanied the Special Operations Group headed by Sub-Inspector, M.Z. Khan and other Constables went on Govt. jeeps to conduct inspection on Nepal border, and after conducting such inspection reached Katarnia Ghat Range Office, Nathuram Tripathi Forest Guard told them about illegal felling of trees in his Beat near Gerua River. In the Forest Range Office at Katarnia Ghat, they met the Ranger - Rajendra Kumar, Deputy Ranger - Abdullah Khan, Foresters, Forest Guards, and Forest Watchers, who then accompanied them to the place near Gerua River, where trees were being illegally felt. On reaching the banks of Gerua River, they also took along personnel manning PAC outpost, and reached the spot as shown by Nathuram Tripathi Forest Guard. They quietly surrounded the place where a tree was being felled at around 01:30 AM and caught five persons along with axes and saws used for cutting trees. These five persons revealed their names as Surya Lal, Harichanda, Chankau, Haule, all residents of Ishwari Ganj and Hariram Tharu resident of Soli Thana, Rajapur in Nepal. On lighting the torch Nanmoon the

informant told them that of the five, three i.e. Surya Lal, Chankau and Harichanda were the same persons who had killed Jitendra Munshi and Kallu Watcher in his presence on 05.08.2001.

43. In the Recovery Report/arrest dated 13.09.2001, it has been mentioned that after the three accused were identified by P.W.19, they themselves told the Police team that they had killed Jitendra Lala and Kallu Watcher because they had insulted and beaten them up the previous evening without any fault. They also expressed a willingness to show the place where they had hidden the cycles and the clothes of the deceased and the knives they had used for assaulting the victims. When it was dawn, they had taken the accused with them, who took out the cycles and the clothes of the victims and dug out the knives used in the assault from the ground. Both the knives had around seven to eight inches long blades. One had a wooden handle the other had a metal handle. The accused confessed of having first asked the victims to take off their clothes, then tied their hands behind their backs and then had killed him with the knives which had been recovered. The knives and clothes were sealed in separate bundles to be sent to the forensic lab for examination, the Recovery Memo was prepared on the spot, it was read out to the accused and their thumb impressions taken on it. The other two persons Haule S/o Ram Charan and Hariram S/o Dude Tharu were also arrested and handed over to Rajendra Prasad Range Officer Katarnia Ghat for being separately prosecuted for forest offence.

44. Learned AGA on the other hand has submitted that the Trial Court has not committed any illegality in appreciating the evidence available on record and has relied on the evidence of witnesses of fact, who, according to him appear to be trustworthy and reliable. It has further been submitted that the evidence of eyewitness of the incident has been supported by medical evidence and thus it was proved beyond reasonable doubt before the Trial Court that the accused persons have committed the murder of the deceased by stabbing them with knives, and there is no perversity in the judgement of the Trial Court, which would warrant interference in this appeal by the High Court.

45. Having heard the learned counsel for the appellants and having gone through the statements of the prosecution witnesses, we examined the judgement of the Trial Court carefully. The Trial Court has placed reliance upon the testimony of Nanmoon, the Forest Watcher, who is stated to be an eyewitness.

46. In ***Vadivelu Thevar Vs. State of Madras AIR 1957 Supreme Court 614,*** the Supreme Court had observed the contention that in a case of murder the Court should insist upon plurality of witnesses is much too broadly stated. The well recognised Maxim is that "evidence has to be weighed and not counted". Our legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. Vadivelu Thevar's case was referred to with approval in ***Jagdish Prasad Vs. State of Madhya Pradesh AIR 1994 Supreme Court 1251,*** where it was held that as a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness.

47. This Court finds it difficult to believe P.W.1 as according to him the accused were reckless enough to have

stopped them on a busy road leading to Nepal border in the late evening at around 06:00 PM and then taking them to a secluded spot in the forest and then stabbing two of his companions only because one had scolded and slapped them a day earlier. If the accused were indeed so vengeful and reckless they would have killed Nanmoon also and left no eyewitness at all. It is difficult to believe that P.W.1 was let off only on his begging them to leave him.

48. Also, Nanmoon in his statement does not reveal that he along with others of the Forest Range had gone in the morning of 06.08.2001 to the scene of crime and brought Jitendra Lala in a serious condition to the District Hospital Bahraich for treatment and while going to the forest had lodged FIR at 06:10 AM by giving the written report to the Station House Officer at Police Station Sujauli.

49. P.W.1 also stated that wife of Dashrath Watcher belonged to Karmohini village in Nepal and Bhukali another Watcher belonged to the same village. P.W.1 also stated initially that at the time when the accused had stopped them on the way two were carrying guns and one had an iron rod. Later he changed the story and stated that two accused were carrying knives with which they stabbed the victims. Also, P.W.1 said he was not taken to the Police Station by Deputy Ranger Abdullah to lodge FIR but Constable Moharrir Mohit Yadav P.W.7 stated that both Abdullah and Informant had come on bicycles to the Police Station to lodge FIR. It is difficult to believe that Nanmoon and Abdullah had cycled their way to the Police Station on morning of 06.08.2001 as revealed by Mohit Yadav Constable Moharrir to lodge FIR with the Police and then went to rescue Jitendra Lala from the forest alone and the police did not accompany them

50. P.W.1 also failed to state that after raid on 13.09.2001 night and catching the three accused they were taken along with two independent witnesses Ameere and Ghasite to the scene of crime to recover clothes and cycles of the deceased and the two knives used in killing the victims.

51. Even if we take the statements of P.W.1 as believable and comprehensive, description of what happened on the night of 05.08.2001, P.W.1 has himself given two versions of the prosecution story. He has stated at one place that after stopping him and Jitendra Lala and Kallu Watcher on the road between Beat No.1 and Beat No.2, the accused had taken them to a secluded place in the forest and asked them to sit under a tree. Then they asked Jitendra Lala to take off his clothes and Kallu Watcher also to take of his clothes. They were stripped down to their underwear and their hands were tied behind their back with a rope made out of Rattan. Then one of them Surya Lal took Jitendra Lala aside and away from the sight of the others and returned alone some fifteen minutes later. On his return Chankau took Kallu Watcher away to the opposite side, and he also returned some 15 minutes later. It is evident from this version that P.W.1 had not clearly seen either Surya Lal or Chankau actually stabbing the victims to death.

52. The testimony of P.W.2 has been discarded by the Trial Court on the ground that initially he had stated that he was accompanying the victims on 04.08.2001 and had witnessed Jitendra Lala scolding and slapping the accused, but later changed his stand and stated that he had no personal

knowledge of the incident on 04.08.2001 which could be the motive for the accused to kill the victims the next day.

53. While discussing the testimony of P.W.3, the Trial Court only referred to the raid conducted in the night of 13.09.2001 and catching of the accused alongside two other people, recovery of clothes, cycles of the deceased and the knives used by the accused to kill the victims. Abdullah, Deputy Ranger, P.W. 3 had also stated that he was on leave two days before the incident and returned from leave two days later to the Range Office. However, the Trial Court presumed that since there were residential quarters in Katarnia Ghat range, he may have been present in office to note down the story of attack as told by Nanmoon and then submitted the written report at Police Station Sujauli on 06.08.2001.

54. P.W.3 had given names of independent witnesses as Ameere and Ghasite but P.W.7 M. Z. Khan had given their names as Amir Hasan S/o Ghasite and Munnawar Ali S/o Kalute. Also P.W.7 stated that he was called to Police Station Sujauli by Inspector in-charge Jitendra Kumar Kaushal and then a team of nearly forty persons had conducted the raid on the night of 13.9.2001 whereas other prosecution witnesses have given the number of personnel conducting such raid as 29-30 only.

55. It is apparent that there is a marked discrepancy in the number of persons, who had allegedly gone for conducting the raid on 13.09.2001 in Beat No. 1 to catch hold of persons illegally felling of trees in the statements given in this regard by the official witnesses. The number of such persons arrange from 10 to 12 in the statement of P.W. 21 to 29-30 in the statement of P.W.10 to 40-45 in the statement of P.W.11.

56. Also official witnesses have not stated clearly as to when they went to retrieve the victim Jitendra Lala from the forest after receiving news of the attack from P.W.1. It is apparent Jitendra Lala was brought to District Hospital at around 09:00 AM on 06.08.2001, but it is not clear as to who brought Jitendra Lala to the hospital. Inquest was conducted at around 11.45 A.M. and the body handed over to Constable Bhupendra Singh at 01:00 PM. The body reached the mortuary for post-mortem on 06.08.2001 at 03:00 PM.

57. It is strange that no attempt was made by the Investigating Officer after taking additional statement of Dashrath, Nanmoon and Bhukali and deriving knowledge regarding names of the accused to approach the Nepal Police for handing over of the accused as they had committed an offence in India. The Investigating Officer also did not try to find out whether the accused were in fact relatives of Ramswaroop Tharu and Pulwinder Tharu as mentioned in the FIR lodged on 06.08.2001 by the first informant. There was no attempt by the Investigating Officer to conduct search operations to nab the accused until the incident on 13.10.2001, when it is alleged that after conducting a routine checking of Indo-Nepal Border, the Police personnel from Sujauli Police Station and SOG Team reached the Range Office at Katarnia Ghat and were told by one Forest Guard about the illegal felling taking place in his Beat No.1.

58. It is also strange that the prosecution story has been repeated with great accuracy by all the official witnesses,

who were part of the team that raided the forest at night on 13.09.2001 and caught the accused felling a sheesham tree. But there is discrepancy in the statements of P.W.5, P.W.11 and P.W.1 with regard to whether after catching the accused at around 1:30 AM on the night of 13/14.09.2001, the entire team waited in the forest till dawn or whether they returned to the Katarnia Ghat Range Office and then went into the forest again early next morning to recover the cycles and clothes of the deceased and the weapons of assault. No attempt has been made by the Trial Court to call the independent witnesses, Amir Hasan and Munnawar Ali, who had allegedly witnessed the recovery of the assault weapons and belongings of the deceased.

59. The Constable Moharir Mohit Yadav had stated that Abdullah and Nanmoon had both come on bicycles in the morning at around 06:00 AM to the Police Station Sujauli to lodge FIR whereas Nanmoon stated that he stayed back in the Range Office and Abdullah did not take him along to Police Station for lodging FIR in the morning of 06.08.2001. Yet, P.W.1 Nanmoon, in his statement also said that written report was prepared by Abdullah, Deputy Ranger on the night of 05.08.2001 on dictation given by Nanmoon, who was illiterate, and the written report was handed over to the Police Station by them in the morning of 06.08.2001, while going to the forest to retrieve the injured victims. It is also curious that the body of Jitendra Lala was not covered with maggots when it was brought to the hospital in the morning of 06.08.2001, but the body of Kallu watcher, who was injured and died on 05.08.2001 and his body retrieved at 11:30 AM on 06.08.2001 was covered with maggots and the skin had disintegrated at some places when it was brought to the Hospital.

60. It is also strange that despite having derived knowledge of the attack in the night of 5/6.08.2001, and Jitendra Lala, being most probably alive, no attempt was made by the persons posted at the Range Office to rescue Jitendra Lala from the forest in the night itself. The Forest Range Office had sufficient number of personnel guns and torches/ search lights. The PAC Check Post was near the border and they could have easily sought help from PAC personnel to retrieve Jitendra Lala, who was still alive. P.W.1 has stated that he could hear the Jitendra Lala groaning with pain at the time he was leaving the forest. He had stated that he had seen Kallu Watcher die instantly, but Jitendra Lala was still alive. Also, P.W.1 has stated during cross-examination that he had not caught any person illegally felling of trees in his more than twenty years of service as Watcher which included his service tenure after the incident and the Trial Court has dismissed such statement on the ground that it had no relation to the offence.

61. P.W.1 had also stated that there was a twelve feet wide road on which vehicles could move easily in between Beat No.1 and Beat No.2, and this road led straight to the Forest Check Post, but it is strange that at the time they were stopped by the accused on this road near Ghalghala Nala, no other person traveling on the road saw them being stopped. The Trial Court observed that since the incident took place at around 09:00 to 10:00 PM at night, there was very little likelihood that other members of the public were traveling on the same road. But this Court has noticed that P.W.1 had stated clearly that when he was returning from his duty of inspecting the forest in Beat No.1 at around 07:00 PM, he had met Jitendra Lala and Kallu also returning from the duty in Beat No.2 in the

evening. It is not clear as to how the Trial Court has come to the conclusion that the incident took place around 09:00 to 10:00 PM at night.

62. No medico legal examination of P.W.1 had taken place yet the Trial Court believed the statement made by P.W.1 that he had also been beaten up by the accused and he had injuries on his face. No such injuries were reported by P.W.1 while telling the story of attack on Jitendra Lala and Kallu watcher to the scribe of the written report.

63. During cross-examination of Dashrath, it had also come out that he and his wife also lived in Nepal in the neighbouring Karmohini Village while the accused belonged to Ishwari Ganj. Dashrath had also stated that he and Bhukali along with Nanmoon had been kept in Police lock up and tortured so that they would reveal the names of the accused, but they did not tell the names of the accused although they knew that they belonged to the family of Ramswaroop Tharu and Purinder Tharu.

64. The Trial Court has taken the testimony of P.W.1 to be wholly reliable whereas from the statement of P.W.1 it is evident that he has changed his stand often during his cross examination.

65. The Trial Court has treated P.W.3 Abdullah, Deputy Ranger as a wholly reliable witness, however, Abdullah himself had stated that he was on leave two to three days before the incident which happened in the night of 05.08.2001 and he returned to the Range Office around two days later.

66. P.W.4 Dr Ajay Kumar Tiwari Medical Officer on duty in District Hospital, Bahraich on the morning of 06.08.2001 had stated that Jitendra Lala was brought in at around 09:00 AM in a serious condition and he died fifteen minutes later. However, no question was put to this Witness regarding, who brought Jitendra Lala to the hospital at 09:00 AM.

67. P.W.5 M. Z. Khan had stated that he was in-charge of SOG Team and he accompanied Jitendra Kumar Kaushal of Police Station Sujauli to Indo-Nepal Border near Bhardia and Fakir Puri Villages and when they reached Katarnia Ghat, the Forest Guard Nathuram told them that some illegal felling was being done in the forest on the other side of Gerua river. The Forest Range Officer, Rajendra Kumar, along with other Forest Department employees and PAC Force at the Check Post accompanied the Police and SOG Team inside the forest on foot and at around 01:30 AM, they had found five persons cutting down a sheesham tree. P.W.5 also stated that the accused readily confessed to having killed Jitendra Lala forest guard and Kallu Watcher because they had scolded and slapped them the previous night.

68. P.W.5 stated that they came along with the five persons to the Range Office and next morning they along with two independent witnesses, Amir Hasan S/o Ghasite and Munnawar Ali S/o Kalute and the accused went again into the forest to recover the clothing and cycles of the victims and the weapons of assault.

69. The Trial Court has treated P.W.5 M. Z. Khan as wholly reliable on the ground that P.W.5 had no personal enmity with the accused to falsely implicate them in the crime, but his testimony varies from that of P.W.1 and P.W.11.

70. The Trial Court has also glossed over the testimony of Dr. M. R. Malik

P.W.6, who had conducted the postmortem on Jitendra Lala's body. Dr. M. R. Malik had stated that the nature of injuries on the body were such as they could have been caused by a heavy sharp edged weapon like a Pharsa or a Gandassa or a Kanta. However, the Trial Court did not analyse the nature of injuries, which were so deep as to cut through the bone, reach wind pipe, the food pipe and carotid artery, and then find out whether such injuries could have been caused by knives, such as those recovered allegedly from the accused with blades only around seven to eight inches long.

71. The Trial Court while dealing with the testimony of P.W.9, Sub-Inspector, Digvijay Singh, who was the Investigating Officer, who took over investigation from Sub-Inspector Sreenivas Chaudhary on 09.08.2001 failed to consider that no attempt was made by the second Investigating Officer to nab the accused, and in fact, he was removed from the case and transferred out because of his failure to do so.

72. P.W.11, Jitendra Kumar Kaushal had been handed over the investigation and he had taken charge only on 26.08.2001 and in the night of 13.09.2001, he was so fortunate as to have received information regarding illegal felling being carried out near Gerua River, and caught the accused.

73. While dealing with the testimony of P.W.10, the Trial Court has noted that he left for the scene of crime immediately on receiving information in the morning of 06.08.2001 and reached the scene of crime around 5 hours later, because it had started raining. P.W.10 only testified about finding the body of Kallu Watcher around 3 kms. away from No Man's Land and 4 kms. away from the banks of the river. He started inquest on Kallu Watcher's body, at around 11:00 AM. The Trial Court failed to notice that if Kallu Watcher's body was retrieved in the morning of 06.08.2001 at around 11:00 AM and brought to hospital for postmortem, it is not clear as to how the postmortem was done the next day when the doctor had found the body covered with maggots and the skin disintegrated at many places.

74. Sub-Inspector, Sreenivas Chaudhary P.W.10 had also stated that he had not made any attempt to find out the whereabouts of Jitendra Lala. He did not go to the hospital where Jitendra Lala was admitted and later died. He did not visit the mortuary to conduct inquest on his body, it is not clear from the testimony of any of the official witnesses as to who in fact retrieved Jitendra Lala from the forest and admitted him to hospital and who conducted the inquest on his body, although from the inquest report, it is clear that the inquest was done in the hospital in presence of the Additional City Magistrate as he had countersigned the same. It is not clear as to how then Jitendra Lala was retrieved and brought to the hospital on the morning of 06.08.2001 at around 09:00 AM as testified by P.W.4 Dr Ajay Kumar Tiwari Medical Officer on duty. The Trial Court failed to notice that in the statements given by official witnesses, it had come out that Jitendra Kumar Kaushal had been posted as in-charge at Police Station Sujauli on 12.09.2001, but he has stated at one place that he took over investigation on 26.08.2001. He had taken the additional statements of Nanmoon Watcher and Dashrath Watcher and his wife and Bhukali Watcher and he had come to know the names of the accused during the course of taking the additional statements.

75. The Trial Court has tried to fill in the gaps in the testimony of all the witnesses through conjectures and surmises and assumptions, which cannot take the place of evidence. Suspicion, however, great cannot take the place of evidence and bring home the guilt to the accused.

76. The Trial Court has brushed aside the argument of the defence that there was no strong motive for the accused to kill Jitendra Lala and Kallu Watcher as according to the Trial Court, Nanmoon, the only eyewitness. Further, where there is an eyewitness account available motive becomes irrelevant.

77. This Court has noticed the timeline as described by P.W.1 also does not match the prosecution story. P.W.1 initially stated that he was returning from Beat inspection at around 07:00 PM when he met Jitendra Lala and Kallu Watcher on his way and all three were returning to the Beat Check Post from the main road, which leads to Nepal Ganj, when they were stopped by the three accused. The three accused disrobed Jitendra Lala and Kallu. They did not, however, ask P.W.1 to take off his clothes also. He was also not tied up with rope. He was left alone with Harichanda keeping watch, while other two were taken in two different directions and attacked with knife. The accused came back and then allowed P.W.1 to go free and also allowed him to take his cycle. Being residents of Nepal, they could have taken the cycles belonging to the two victims with them. They did not also take the knives which they had used to injure the deceased with them to Nepal. They calmly untied the hands of P.W.1, only threatened him not to disclose the incident to anyone, let him ride his bicycle to the Forest Check Post, and did not try to abscond or stay away in Nepal for sufficient amount of time for all traces of the incident to have disappeared/get buried in the Forest under growth, but returned within one month to again do illegal felling at night when they were caught by the police, PAC and Forest Officials.

78. If the incident had happened at around 09:00 to 10:00 PM on 05.08.2001 and the body of Kallu Watcher was retrieved the next morning at around 11:30 AM, and inquest performed the same day did not reveal presence of any maggots on his body, when his postmortem was conducted on 07.08.2001 in the morning, then how his body was full of maggots and the skin disintegrated at some places, as was reported by the medical officer conducting the postmortem.

79. In the forensic examination report blood stains on clothes worn by the deceased were found to be of human origin, but on other specimens like knives allegedly used by the two accused for attacking the victims, the blood stains had disintegrated, and their origin could not be determined. It may be because the clothing and the knives were recovered in the morning on 14.09.2001 and sent to the Forensic Science Laboratory some five months later.

80. Also, the recovery/arrest memo at page 15 of the paper book on which reliance has been placed by the prosecution, appears to be doubtful. No independent witnesses have been examined to prove the contents of the recovery memo. Only the official witnesses have been relied upon and such official witnesses have also not been able to give a foolproof account of how the deceased were murdered.

81. As per the prosecution story, two knives and clothes were recovered from the

site where the police and SOG Team and forest officials had been taken by the accused at on on 14.09.2001. However, such specimens of clothing and weapons of assault were sent to the forensic science laboratory in the first week of March 2002, almost five months later. The forensic science laboratory's report, therefore, found the blood disintegrated and it could not also give a definite opinion regarding it being of human origin. There was no question of matching of blood group of the victims. Hence, in view of the law settled by the Hon'ble Supreme Court in the case of ***Sonvir @ Somvir Vs. State NCT of Delhi (2018) 8 SCC 24,*** the weapons of assault allegedly recovered on 14.09.2001 at the behest of the accused and allegedly used in the commission of the crime cannot be taken as pieces of incriminating evidence against them.

82. Also, in view of the observations made by the Supreme Court in the case of ***Prakash Vs. State of Karnataka (2014) 12 SCC 133*** regarding recovery of blood stained clothes of the victims identified by P.W.1, it cannot be said that since such clothes were blood stained and the blood in them was found of human origin, they could be said to belong to either of the victim. No serological comparison of the blood stains with that of the blood group of the victims was conducted.

83. Also, it is quite questionable as to how P.W.1 could recognise the accused Surya Lal, Chankau and Harichanda as the ones who had killed the victims as it is not the case of the prosecution that P.W.1 or any other victim was carrying a torch at the time of them being stopped by the three accused on their way while returning from duty. It is the prosecution story that P.W.1 and the two victims were taken by the accused inside the dense forest. We should not forget that they were stopped on 06.08.2001 at around 07:00 PM on the road between Beat No.1 and Beat No.2, and then taken inside the dense forest where no one could see them. On the Indo-Nepal Border in a reserve forest like Katarnia Ghat, there is hardly any source of light and during the monsoons in the month of August poor visibility owing to darkness at the scene of crime cannot be ruled out.

84. The Hon'ble Supreme Court in ***Sujit Biswas Vs. State of Assam (2013) 12 SCC 406*** in paragraphs 13 and 14 has held as under:–

"13. suspicion, however great it may be, cannot take the place of proof, and there is a large difference between something that "maybe" proved, and something that "will be proved". In a criminal trial, suspicion, no matter how strong, cannot and must not be permitted to take the place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent, and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the Court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of passionate judicial scrutiny, based upon a complete and comprehensive

appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial, or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (vide ***Hanumant Govind Nargundkar Vs. State of M.P. AIR 1952 Supreme Court 343, State Vs. Mahendra Singh Dahiya (2011) 3 SCC 109; and Ramesh Harijan Vs. State of UP (2012) 5 SCC 777.***

14. In ***Kali Ram Vs. State of Himachal Pradesh (1973) 2 SCC 808,*** *this Court observed as under: (SCC page 820, Para 25)*

"25. Another golden thread, which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted…."

85. In view of the observations made here in above with regard to the acceptability of the evidence, and investigation being defective, if primacy is given to such prosecution story based on negligent investigation, the faith and confidence of the people would be shaken, not only in the law enforcing agency, but also in the administration of justice.

86. Consequently, the appeals deserve to be allowed and are **allowed**. The judgement and order dated 07.08.2014 is **set aside.** The appellants appear to be in jail, therefore it is directed that the appellants shall be released from prison forthwith. However, they shall file personal bonds along with two sureties of Rs.25,000/- each before the Trial Court within 30 days from today, as provided under section 437A of the Code of Criminal Procedure. (Now, Section 481 of the BNSS).

87. A Copy of this order along with the record of the Trial Court, be immediately sent to the Trial Court for compliance.

88. Sri Shreesh Kumar Mishra Atal, learned Amicus has very sincerely assisted this Court and we appreciate the effort put in by him. He is directed to be paid Rs.22,000/- as consolidated honorarium/fees for both the appeals allowed by us today.

(2025) 9 ILRA 106
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Criminal Appeal No. 1594 of 2017
&
Connected With Other Cases

Irfan ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Mr. Kamta Prasad, Mr. Sushil Kumar Dwivedi, Mr. M.P. Yadav, Mr. Indra Pal Singh

Counsel for the Respondent:
Mr. Shashi Shekhar Tiwari, A.G.A., Mr. K.K. Nishad

Issue for Consideration

The matter pertains to credibility of the gang rape case and uncorroborated testimony of the prosecutrix.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Evidentiary value of Prosecutrix testimony-Medical Evidence subordinate to ocular evidence-The appellants were acquitted-The primary reason was the highly unreliable identification procedure as they were identified for the first time in the dock and were previously unknown to the prosecutrix, who was in a semi-conscious state at the time of crime-the ocular evidence is paramount and will prevail over medical evidence if the victims' statement is consistent and trustworthy.

Held

The court affirmed that the prosecutrix's statement that she was ravished by multiple men was not to be disbelieved altogether, even if she was in a semi-conscious state, and even if she could not reliably identify the offenders-The court reiterated that the absence of injury to the prosecutrix's private parts does not mean her account of the gruesome crime is to be disbelieved, confirming the principle that the ocular evidence will prevail over the medical evidence when it is clear and trustworthy-Three Appellants acquitted-One appellant's conviction upheld. (E-6)

Case law Cited

Lilia alias Ram Swaroop Vs State of Rajasthan,(2014) 16 SCC 303, Amrik Singh Vs State of Punjab,(2022) 9 SCC 402 & Allarakha Habib Memon & Ors Vs State of Gujarat, (2024) 9 SCC 546, Kanan & Ors Vs State of Kerala, (1979) 3 SCC 319 & Dana Yadav alias Dahu & Ors Vs State of Bihar,(2002) 7 SCC 295,Lok Mal alias Loku Vs State of U.P., (2025) 4 SCC 470, State of Uttar Pradesh Vs Chhotey Lal, (2011) 2 SCC 550.

P.Sasikumar Vs State of T.N., (2024) 8 SCC 600, Devinder Singh & Ors Vs State of H.P., (2003) 11 SCC 488,Manoj Giri Vs State of Chhattisgarh, (2013) 5 SCC 798, Kuruva Sreenivasulu Vs SHO, Ullindakonda P.S., 2023 Supreme (AP) 47,Praveen Vs State of NCT of Delhi 2025 SC Online Del 5583, Vijay alias Chinee Vs State of M.P., (2010) 8 SCC 191, J.Lalruatsanga Vs State of Mizoram & Anr, 2020 SCC OnLine Gau 4897,Raju alias Umakant Vs State of M.P., 2025 SCC OnLine SC 997-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Prosecutrix, semi-conscious state, trustrworthy, ocular evidence, acquittal, gruesome crime, rigorous imprisonment, assault, testimony, external injury, Hindu Yuva Vahini, confounded, occurrence, dock, impediment, offenders, non-complicity, ravishment, alcohol, benefit of doubt.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No.–1594 of 2017

From the Judgment and Order dated 19.09.2025 of the High Court of Judicature at Allahabad.

Irfan Vs. State Of U.P.

Appearances for Parties

Counsel for Appellant

Mr. Kamta Prasad in Criminal Appeal No.1594,Mr. Sushil Kumar Dwivedi in Criminal Appeal No. 1897 of 2017,Mr. M.P. Yadav in Criminal Appeal No. 1580 of 2017, &, Mr. Indra Pal Singh Rajpoot in Criminal Appeal No. 1282 of 2017

Counsel for Respondent

Mr.Shashi Shekhar Tiwari, A.G.A. along with Mr. K.K. Nishad,State Law Officer on behalf of the State in all the appeals

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

1. These are appeals by four convicts, who stood their trial before Mr. Ram Kushal, the Additional Sessions Judge/ F.T.C., Mahoba, in Sessions Trial No.55 of 2015 (arising out of Crime No.7 of 2015), under Section 376-D of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Charkhari, District Mahoba. All the four convicts, to wit, Irfan son of Shahzade,

Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu, were sentenced by the learned Trial Judge to suffer rigorous imprisonment for a term of 20 years along with a fine in the sum of Rs.20,000/- each; and, in default, to undergo for a further term of two years.

2. A First Information Report (for short, 'FIR') was lodged on 13.01.2015 by the informant Shyam Kumar son of Mani Lal, a resident of Mohalla, Qasba and Police Station Charkhari, District Mahoba, with Police Station Charkhari at 7.30 p.m., saying that his daughter 'A', aged 20 years, had left home on 11.01.2015 at about 7 o'clock in the evening in order to buy some *gutkha* for him. It is said that on account of cold weather and fog, almost all shops in the vicinity of the informant's home had closed for the day. 'A', who shall hereinafter be referred to as 'the prosecutrix', found Irfan @ Golu and Ritesh @ Shanu outside the informant's home, who muffled her voice and forcibly took her to a building in ruins, situate behind a shop, called Gaffar Chacha's. There, these two men had the company of another two, whom the prosecutrix does not know, but can recognize them. The two men, last mentioned, were already there. All four of them forced the prosecutrix to imbibe alcohol and beat her up. Next, all the four ravished the prosecutrix one by one and left her there, still inebriated.

3. On the 12th of January, 2015 at about 7 o'clock in the morning, the prosecutrix regained consciousness and raised alarm. It was then that, according to the informant, one Babu Lal Shankhwar informed him that his daughter, the prosecutrix, was lying in the ruins behind *Gaffar Chacha's* shop and that she was groaning. The informant, along with his wife, then picked up the prosecutrix and brought her to the police station. His daughter was in a state of shock and fear. At that time, according to the informant, she disclosed so much and no more to the informant that Irfan @ Golu had beaten her up. Thereupon, the informant got NCR No.3 of 2015 registered against Irfan @ Golu under Section 323 IPC, but on the following day, when the prosecutrix fully regained her senses, she told the informant that on 11.01.2015, Irfan @ Golu and Shanu, besides two of his accomplices, had ravished her by turns. The informant was, therefore, reporting the offence to the Police for action to be taken in accordance with law.

4. There is indeed on record, though not included in the paper-book, an information dated 12.01.2015 lodged by the informant, giving rise to NCR No.3 of 2015, under Section 323 IPC, relating to the selfsame incident dated 11.01.2015, as the one subject matter of the FIR, lodged on 13.01.2015. Allusion would be made to this NCR later in this judgment.

5. The written information, on the basis of which the FIR, giving rise to the present appeal was registered, was, after proof, marked as Ex. Ka-1, whereas the check FIR marked Ex. Ka-6. The prosecutrix's statement under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was taken down by Lady Constable, Shashi Prabha, on 14.01.2015 and signed by the prosecutrix. Upon proof of the said statement by the prosecutrix, it was marked Ex. Ka-4. The prosecutrix's statement under Section 164 Cr.P.C. was recorded before a Judicial Magistrate on 16.01.2015, who was functioning as the Civil Judge (Jr. Div.), Mahoba.

6. After investigation, the Police filed a charge-sheet on 10.02.2015 against six accused, to wit, Irfan @ Golu, Shanu son of Qasim, Irfan son of Shahzade, Chhotu @ Imran, Ritesh son of Bhawani Prasad and Kallu @ Manvendra Singh.

7. The Magistrate took cognizance on 08.04.2015. In due course, the case was committed to the Sessions, where all the six accused were jointly charged by the learned Additional Sessions Judge/ F.T.C., Mahoba on 29.04.2015 for an offence punishable under Section 376-D IPC. All the four accused pleaded not guilty and claimed trial.

8. The following witnesses were examined on behalf of the prosecution: PW-1, Shyam Kumar, the first informant; PW-2, the prosecutrix; PW-3, Lady Constable Shashi Prabha; PW-4, Dr. Amrita Singh; PW-5, Abdul Rajjak; and, PW-6, Dr. Anand Swaroop.

9. The following documents were produced at the trial: the written first information report, Ex. Ka-1; memo of recovery relating to slippers of the prosecutrix, water and liquor bottles recovered from the scene of occurrence, Ex. Ka-2; memo relating to clothes of the prosecutrix worn at the time of occurrence that were seized as material evidence, Ex. Ka-3; the statement of the prosecutrix under Section 161 Cr.P.C. recorded by the Lady Constable, Ex. Ka-4; the statement of the prosecutrix recorded by the Magistrate under Section 164 Cr.P.C., Ex. Ka-5; check FIR, Ex. Ka-6; GD Entry evidencing registration of the crime at the police station, Ex. Ka-7; the prosecutrix's medical examination report, Ex. Ka-8; the site-plan relating to the place of occurrence drawn up by the Investigating Officer, Ex. Ka-9; memo of arrest relating to Golu @ Irfan and Shanu, Ex. Ka-10; memo of arrest relating to Ritesh, Kallu @ Manvendra, Irfan son of Shahzade and Chhotu @ Imran, Ex. Ka-11; the charge-sheet, Ex. Ka-12; memo of the prosecutrix's statement recorded on a Compact Disk (CD), Ex. Ka-13; memo of recovery relating to Golu @ Irfan's underwear, Ex. Ka-14; memo of recovery relating to underwear of Ritesh, Manvendra, Chhotu @ Imran and Irfan son of Shahzade, Ex. Ka-15; report relating to material exhibit received from the forensic science laboratory, Ex. Ka-16; and, the primary or the first medical examination report relating to the prosecutrix, Ex. Ka-17.

10. The following material evidence was produced by the prosecution: CD carrying the prosecutrix's recorded statement, Material Exhibit (ME) 1; water bottle, wooden planks, slippers, liquor bottle, cigarettes and matchbox recovered from the place of occurrence, ME-2 to ME-13; and, pant, jacket and other clothes worn by the prosecutrix at the time of occurrence, ME-14 to ME-20.

11. After the prosecution evidence was over, the statement of the appellants as well as the co-accused acquitted were recorded under Section 313 Cr.P.C.

12. We propose to refer to the material part of the statements under Section 313 Cr.P.C. relating to the appellants alone. All the appellants, to wit, Irfan son of Shahzade, Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu, after generally denying the evidence shown to be appearing against them, said that they had been falsely implicated and wish to lead evidence in defence. Head Constable,

Virendra Kumar Shukla was examined by the appellants as DW-1.

13. The learned Sessions Judge, vide judgment and order dated 02.03.2017, convicted Irfan son of Shahzade, Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu under Section 376-D IPC and sentenced each of them in the manner already indicated.

14. Aggrieved, these appeals have been filed.

15. Since all the appeals arise out of the same crime, where all the appellants were jointly tried and convicted by the same judgment, all the appeals have been heard together and are decided by this common judgment.

16. Heard Mr. Kamta Prasad, learned Counsel for the appellant in support of Criminal Appeal No. 1594 of 2017, Mr. Sushil Kumar Dwivedi, learned Counsel for the appellant in Criminal Appeal No. 1897 of 2017, Mr. M. P. Yadav, learned Counsel for the appellant in Criminal Appeal No. 1580 of 2017, and, Mr. Indra Pal Singh Rajpoot, learned Counsel for the appellant in Criminal Appeal No. 1282 of 2017. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate along with Mr. K. K. Nishad, learned State Law Officer has been heard on behalf of the State.

17. The learned Counsel for the appellants, appearing in all the appeals, have advanced some common submissions to discredit the prosecution case against them. They have much emphasized the fact that there is a solitary occurrence, that happened on 11.01.2015 at 7.00 p.m., but two different versions of the same occurrence have been put forward by the informant before the Police – the first being reported as an NCR on 12.01.2015, and, the other, as an FIR on 13.01.2015. They submit that relating to the same occurrence dated 11.01.2015, in N.C.R. No.3 of 2015, which was registered at 7.30 a.m. at the instance of the prosecutrix, the allegation is one of assault. The prosecutrix was, therefore, sent to the Community Health Centre, Charkhari, along with Lady Constable Shashi Prabha, PW-3, on the strength of a *Chitthi Majrubi* for medical examination. On 12.01.2015 at five minutes past twelve in the afternoon, the prosecutrix was medically examined by Dr. Anand Swaroop, PW-6, who noticed six external injuries and referred the prosecutrix to the Women District Hospital, Mahoba for her internal examination. On 13.01.2015 at 5.30 p.m., the prosecutrix was subjected to an internal examination by PW-4, Dr. Amrita Singh. She did not notice any telltale injury on the prosecutrix's private part, suggestive of sexual assault. Learned Counsel for the appellants emphasized that until this time on 12.01.2015, there was nothing said about the case of gang-rape i.e. until 5.30 p.m. on 13.01.2015.

18. On 13.01.2015, the FIR, giving rise to Crime No.7 of 2015, under Section 376-D IPC, was got registered at Police Station Charkhari by the informant at 7.30 p.m. against two nominated accused, Irfan @ Golu and Shanu son of unknown, together with two unnamed offenders. The case in the FIR is entirely different, which speaks about abduction by two of the nominated accused, who carried her off to a building in ruins, behind Gaffar's shop, made her forcibly drink alcohol upon pain of assault and then ravished her by turns throughout the night.

19. It is next submitted that the allegation against Irfan @ Golu was that when the proecutrix was proceeding to buy *gutkha* for her father leaving home, Irfan @ Golu met her on way, caught hold of her along with co-accused Shanu, who has been acquitted. Both of them forced her to a remote place, where she was ravished. It is also emphasized by the learned Counsel for the appellants that in her statement under Section 161 Cr.P.C., the prosecutrix came up with allegations against Irfan @ Golu and the acquitted co-accused Shanu, who caught hold of her, when she was proceeding to buy *gutkha* for her father. It is said that she raised alarm, but in vain. What is emphasized is that in this statement too, there is no reference to the appellants, Ritesh, Kallu @ Manvendra Singh and Chhotu @ Imran.

20. It is next submitted that according to the testimony of PW-5, the Investigating Officer, he recorded Irfan @ Golu's confession as well as that of Shanu, the acquitted co-accused, in police custody. It is urged that without any lawful evidence appearing against the other four, to wit, Ritesh, Kallu, Irfan and Chhotu @ Imran, PW-5 implicated them on the basis of co-accused's confession, which the learned Counsel for the appellants say, is inadmissible in evidence. At this stage, learned Counsel for the appellants point out that on 14.01.2015, according to the testimony of PW-5, Inspector Abdul Rajjak, the appellant Irfan @ Golu and the acquitted co-accused Shanu, were arrested.

21. Learned Counsel for the appellants say that on 15.01.2015, the remainder of the unnamed accused, to wit, Ritesh, Kallu @ Manvendra Singh, Irfan son of Shahzade and Chhotu @ Imran, were arrested by PW-5, Inspector Rajjak, on account of heavy pressure from the Bharatiya Janata Party Leaders, which came in consequence of the confessions of Irfan @ Golu and the acquitted co-accused Shanu.

22. It is argued by the learned Counsel for the appellants that on 16.01.2015, the prosecutrix was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. In that statement, the prosecutrix disclosed the name of Irfan @ Golu, Shanu and another Irfan, besides one unknown offender, whose face had been covered by a scarf, all through moments of the crime. Learned Counsel for the appellants emphasize that in the statement under Section 164 Cr.P.C., the names of appellants, Ritesh, Kallu @ Manvendra Singh, were not disclosed by the prosecutrix. Learned Counsel say in one voice that the statement under Section 164 Cr.P.C. was a third opportunity, where the prosecutrix could disclose these two appellants, to wit, Ritesh and Kallu @ Manvendra Singh's name, but she did not. At this stage, there was no fear, if what she had to say were correct. It is next submitted, adding force to the attack, that the prosecution story carried in the FIR dated 13.01.2015, the prosecutrix's testimony recorded under Section 161 Cr.P.C. as well as that recorded under Section 164 Cr.P.C. on 16.01.2015, carry no allegation against Ritesh, Kallu @ Manvendra, not to speak of the acquitted co-accused, Chhotu @ Imran. The learned Counsel for the appellants say that these men were nevertheless arrested on 15.01.2015 and charge-sheeted on 10.02.2015 by PW-5 to assuage public feelings.

23. It is argued by the learned Counsel that these arrests were made under political pressure from leaders of the Bharatiya

Janata Party and the Vishwa Hindu Vahini. It is next said by the learned Counsel for the appellants that PW-5, in his testimony, has said that no doubt he had arrested Irfan @ Golu and Shanu and the rest of the men on 15.01.2015, on the basis of confessions made by Irfan @ Golu and Shanu, but to assure himself of the veracity of the prosecution, he had interrogated the prosecutrix again on 01.02.2015. According to PW-5, learned Counsel for the appellants emphasize, the prosecutrix disclosed the names of Ritesh, Irfan son of Shahzade, Kallu @ Manvendra and Chhotu @ Imran. Learned Counsel submit, with reference to these facts, that the entire prosecution story is based on falsehood, that was conjectured much after the occurrence with a good deal of deliberation and delay in shady settings, highly redolent of doubt and suspicion.

24. Mr. Kamta Prasad, learned Counsel appearing for the appellant, Irfan son of Shahzade and Ritesh in Criminal Appeal No.1594 of 2017 and 1580 of 2017 respectively, has made some submissions specific to the case of these two appellants, which we must note. It is argued that on 12.01.2015 at 7.30 p.m., the prosecutrix arrived at the police station, accompanied by her father Shyam Kumar and his wife, that is to say, the prosecutrix's mother. It is argued that during this visit to the police station, the prosecutrix was fully conscious and there was no impediment, physical or mental, that would keep her back from reporting the offence of rape, if there was one. It is argued that on 12.01.2015, the prosecutrix was sent for her medical examination, but at the time of her medical examination, she did not disclose the fact that she had suffered rape. On 13.01.2015, the prosecutrix was internally examined at the Women District Hospital, Mahoba, but she did not say anything, about being ravished, to PW-4 Dr. Amrita Singh. On the same day i.e. 13.01.2015, the prosecutrix did a U-turn and transmuted a case of assault into one of rape.

25. It is next submitted by Mr. Kamta Prasad that while the FIR lodged on 13.01.2015 mentions NCR No.3 of 2015 in connection with the allegations that figure against Irfan @ Golu, the origin and genesis of the case of assault, earlier set up, was completely suppressed by the prosecution, that was launched on the foot of the FIR, later lodged regarding commission of offence of gang-rape. It is also urged that falsehood of the prosecution can be fathomed by the fact that the appellants, Irfan son of Shahzade and Ritesh, were not named in the FIR, where the nominated accused were Irfan @ Golu and the acquitted co-accused, Shanu son of Qasim. Learned Counsel for the appellants here emphasizes that Irfan @ Golu and Shanu son of Qasim were arrested by Inspector Abdul Rajjak on 14.01.2015 and without any corroborating evidence, the appellants, Irfan son of Shahzade and Ritesh, together with Kallu @ Manvendra and Chhotu @ Imran, were arrested on 15.01.2015 on the basis of a confession attributed to Irfan @ Golu and Shanu son of Qasim. It is emphasized that so far as the appellant Ritesh is concerned, his name has not been disclosed by the prosecutrix, either in her statement under Section 161 Cr.P.C. or Section 164. It is then urged that while the medical examination dated 12.01.2015 certainly supports a case of physical altercation, but the internal examination done later, on 13.01.2015, falsifies the prosecution story of gang-rape, involving six offenders.

26. Learned Counsel for the appellants has drawn our attention to the medico-legal report, that was authored by Dr. Amrita Singh, PW-4, where he emphasizes that she

did not find any injury upon an internal examination of the prosecutrix. The doctor found no marks of violence suffered by the prosecutrix to her private parts, that would surely be there, if she was indeed ravished by six men or four. In support of this contention, learned Counsel for the appellants has reposed faith in **Lilia alias Ram Swaroop v. State of Rajasthan, (2014) 16 SCC 303.**

27. It is submitted by Mr. Kamta Prasad that both the appellants, to wit, Irfan son of Shahzade and Ritesh, are apparently victims of a patently false prosecution. He emphasizes that in contemporary society, laying of false charges of rape is not an uncommon phenomenon. There have been instances, where a parent has persuaded a gullible or obedient daughter to come up with a false charge of rape, either to take revenge or extort money or get rid of financial liability. The case here falls under a cloud of doubt also because Shanu, whose name figured in the FIR as also the statements under Sections 161 and 164 Cr.P.C., has been acquitted by the Trial Court.

28. Learned Counsel points out that the prosecutrix, in her dock evidence, resiled from the allegations against Shanu son of Qasim and Chhotu @ Imran. It was on this account that the Trial Court acquitted them on the same evidence as that appearing against the two appellants. It is emphasized that the Trial Court convicted the appellant, Ritesh, treating him as Shanu, without any cogent or corroborating evidence appearing against him.

29. It is next submitted that the false implication of the appellants is evident from the fact that the prosecutrix did not disclose the name, features or age of the appellants, Irfan son of Shahzade and Ritesh, in any of her statements recorded at the stage of investigation, but identified both Irfan son of Shahzade and Ritesh in the dock for the first time in her testimony recorded about 7-8 months after the occurrence. Ritesh's conviction, according to the learned Counsel, is one absolutely based on flimsy and undependable evidence, which cannot be countenanced. In support of his submission last mentioned, learned Counsel for the appellants has placed reliance upon **Amrik Singh v. State of Punjab, (2022) 9 SCC 402** and **Allarakha Habib Memon and others v. State of Gujarat, (2024) 9 SCC 546.**

30. Elaborating on this submission of his, learned Counsel submits that the dock identification of the two appellants by the prosecutrix, PW-2, done after 7-8 months of the occurrence, is absolutely unreliable. The said witness had not given out either the name or the description of the two appellants, Irfan son of Shahzade and Ritesh in her statement to the Police or that recorded by the learned Magistrate under Section 164 Cr.P.C. Therefore, according to learned Counsel, if at all the prosecution was desirous of establishing the appellants' complicity, the prosecutrix should have been required to identify the two of them in a test identification parade, organized during investigation. Their identification in the dock for the first time is unacceptable. In support of this contention, learned Counsel for the appellants has placed reliance upon **Kanan and others v. State of Kerala, (1979) 3 SCC 319** and **Dana Yadav alias Dahu and others v. State of Bihar, (2002) 7 SCC 295**.

31. Mr. Sushil Kumar Dwivedi, learned Counsel for the appellant, Irfan @

Golu, appearing in Criminal Appeal No.1897 of 2017, has advanced his own arguments, amongst which what is worth mention is that according to the learned Counsel, the first informant in his examination-in-chief has said that on 12.01.2015 at about 7 o'clock in the morning, behind Javed Photographer's shop, he found the prosecutrix lying unconscious in the ruins there. The prosecutrix said that Irfan @ Golu had assaulted her. Therefore, she was medically examined and an N.C.R. registered under Section 323 IPC against Irfan @ Golu alone. On 13.01.2015, according to the informant, when the prosecutrix regained consciousness, she told her mother, Maya Devi, the informant's wife, that Irfan @ Golu, Shanu, Irfan son of Shahzade and Chhotu had ravished her in the ruins. Learned Counsel emphasizes that the FIR, that was lodged on 13.01.2015, nominated two accused and carried the name of two unnamed offenders. It is emphasized that when the prosecutrix had told the entire incident and confided the names of all the four accused with her mother, it is not understandable why the FIR was lodged against two nominated men alone, leaving the identity of two others to uncertainty.

32. It is next pointed out by the learned Counsel for the appellant that the informant, Shyam Kumar, PW-1, along with his wife, Maya Devi, and the prosecutrix went to the police station on 12.01.2015 and lodged an N.C.R. relating to a case of assault, the previous evening at 7.00. The prosecutrix was sent for her medical examination in reference to N.C.R. No.3 of 2015, under Section 323 IPC. Learned Counsel for the appellant is quick to add that in the testimony of PW-2, the prosecutrix, it is clearly said that on 11.01.2015 at about 9.00 p.m., she was conscious and had shared the entire occurrence with her mother, that is to say, whatever had befallen her in the night of 11.01.2015. She was also fully conscious on 12.01.2015, while in the safety of her parents' home and talked to her parents. It is argued that the distance of the place of incident from the police station is one kilometer, but the informant and his wife as also the prosecutrix did not go to the police station until 12.01.2015. They went to the police station and lodged an N.C.R. Neither the informant nor his wife nor the prosecutrix ever came up with a case of rape, when they lodged the N.C.R. on 12.01.2015. The incident had taken place on 7.00 p.m. on 11.01.2015 and the place of occurrence is in the centre of a densely populated area. There are several shops, selling all kinds of wares. Men and women from the locality frequent the place and most of them know the prosecutrix. Learned Counsel submits that it is hard to believe that none of them would have seen or heard the prosecutrix suffer.

33. According to the learned Counsel, this is a case, which, on the evidence forthcoming and the circumstances, is not one which can be accepted by a man of ordinary prudence. It is said that after inquiry into the N.C.R., the prosecutrix was sent for her medical examination by the Police to the Community Health Centre. The informant, with the help of Jagdish Parihar, a local politician, and another Arvind Singh, besides 14-15 persons belonging to the Hindu Vahini, collectively reached Police Station Charkhari, District Mahoba, and successfully pressurized the Police into registering a case under Section 376-D IPC.

34. On behalf of Kallu @ Manvendra Singh, the appellant in Criminal Appeal

No.1282 of 2017, Mr. Indra Pal Singh Rajpoot, learned Counsel for the appellant, has advanced elaborate submissions, but in most of those he is ad *idem* with the learned Counsel in other appeals, whose submissions have already been noticed.

35. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, has supported the impugned judgment and urged that on the evidence on record, the prosecution have established their case beyond reasonable doubt. The learned Trial Judge has rightly convicted all the appellants. He has particularly submitted that PW-1 and PW-2, who are witnesses of fact, have supported the prosecution flawlessly in their dock evidence and successfully withstood a searching cross-examination. The prosecutrix, in particular, has remained consistent in her testimony about the crime and the manner in which it was committed. Her testimony is unshaken, free from blemish or exaggeration. The prosecutrix's evidence is corroborated by the forensic report, Ex. Ka-16 and the injury reports, Ex. Ka-17 and Ka-8. It is emphasized by Mr. Tiwari that the prosecutrix had named four accused and the case was registered against them. Mr. Tiwari has, particularly, urged that the prosecutrix is the sole witness of the crime and her testimony, being consistent and corroborated by forensic evidence, cannot be disbelieved. It is also pointed out by the learned A.G.A. that the appellants have not offered any explanation why the prosecutrix would implicate them falsely or testify against them in Court on a false charge. There is no prior enmity between the prosecutrix, her family and the appellants. The appellants have not been able to lead any evidence to show the motive for a false implication. It is urged very emphatically that the appellants have sexually assaulted the prosecutrix, tortured her, beat her up, and in consequence of all these travails, she has sustained injuries, which the doctor has noticed upon her person.

1. If a case of change or improvement of the prosecutrix's case from one of simple assault to rape:

36. The learned Counsel for the appellants have scathingly criticized the prosecution for coming up with a case that was changed from one of simple assault into rape. They have much harped upon the fact that an N.C.R., bearing No.3 of 2015, was registered on 12.01.2015 at 7.30 a.m., but after the prosecutrix was examined at the Community Health Centre and then at the District Women Hospital on 12.01.2015, the following day, i.e. 13.01.2015 at 7.30 p.m., she came up with allegations of rape regarding the selfsame incident, which was earlier reported as a non-cognizable case to the Police. Learned Counsel for the appellants would say that this is not just an improvement, but a transmutation of one case into another, which initially never was.

37. Upon a perusal of the record, we find that it is true that regarding the occurrence dated 11.01.2015, that happened at 7.00 p.m., when the prosecutrix left home to buy *gutkha* for her father, an N.C.R. was lodged by the prosecutrix's father, after she was rescued by her parents in the morning of 12.01.2015. It does seem odd at the first blush that the prosecutrix, who went to the police station and thence to the two doctors for her medical examination on 12.01.2015, one at the Community Health Centre and the other at the District Women Hospital, where one of the doctors was a woman, she

did not speak anything about being ravished. She came up with the allegation on 13.01.2015, confiding in the first informant what had befallen her during the night, intervening 11/12.01.2015. The explanation furnished in the FIR for not reporting the outrageous crime of gang-rape, was shock and fear that she had suffered. It has elsewhere figured in evidence, particularly, the testimony of PW-1, the first informant, that the prosecutrix was not in the complete possession of her senses due to stupor, resulting from alcohol, and for that reason, revealed a case of assault by Irfan @ Golu on the 12th of January, 2015, when she was recovered. That case was promptly reported to the Police. On the following day, i.e. 13.01.2015, when she fully regained her senses, she disclosed the entire occurrence to her mother, that is to say, the fact that she was gang-raped by the four appellants. It was then that the first informant lodged the present FIR, narrating what had befallen the prosecutrix. The relevant part of the first informant's (PW-1's) testimony reads:

"12 जनवरी को सुबह 7.00बजे जावेद फोटो वाले के पीछे खण्डहर मे बेहोशी की हालत मे मिली। इसके बाद मै उसे थाने लेकर गया। बच्ची ने मुझे मारपीट वाली बात बतायी थी। उसने बताया कि गोलू @ इरफान ने मारा पीटा है। रिपोर्ट लिखवाकर व डाक्टरी कराकर हम वापस आ गये। 13 तारीख को जब वह होश मे आयी तो उसने अपनी माँ को बताया और मेरी पत्नी मायादेवी ने मुझे बताया। उसने बताया था कि गोलू @ इरफान,शानू, इरफान व छोटू ने उसके साथ खण्डहर मे गलत काम किया था। 13 तारीख को जब रिपोर्ट लिखायी तब बच्ची ने अपने हाथ से एक तहरीरी प्रार्थना पत्र लिखा था। उस प्रार्थना पत्र को थाने मे देकर मुकदमा कायम कराया था।"

38. In the FIR lodged by this witness, it is said:

"तब मै तथा मेरी पत्नी xxxx को उठाकर थाने लाये थे मेरी पुत्री उसे समय सदमें तथा भय मे थी उस समय उसने मुझे सिर्फ इतना बताया था कि इरफान उर्फ गोलू ने मुझे मारा-पीटा है तब मैने इरफान उर्फ गोलू के खिलाफ NCR No.3/15 धारा 323 IPC पंजीकृत कराया था किन्तु आज जब मेरी पुत्री xxxx को पूरी तरह से होश आया तो उसने मुझे बताया कि दिनांक-11-1-15 को इरफान उर्फ गोलू व शानू एवं उसके दो अन्य साथियों ने उसके साथ बारी-बारी से दुष्कर्म किया है।"

39. In her testimony (cross-examination dated 24.09.2015), the prosecutrix has explained the sequence of events and the reason for not reporting on the first day the crime of gang-rape, in the following words:

"घटना के बाद मे सुबह छैः बजे अपने घर पिता जी के पास आ गई थी। खण्डर से मुझे मेरे पिता जी व मम्मी लेकर आये थे। मैने खण्डर मे आये अपने मम्मी पापा को देख लिया था व पहचान लिया था उस समय मै होश हवाश मे थी लेकिन मदिरा का नशा था। जब मेरे माता पिता मुझे खण्डर मे लेने आये थे तो मेरे आस पास देशी शराब के क्वाटर पानी की प्लास्टिक की खाली शीशी क्वाटर शराब की खाली शीशी सिगरेट की डिब्बी व कुछ जली अधजली सिगरेट के टुकड़े व माचिस आदि पड़ी थी। ये सभी चीजे मेरी घटना से जुड़ी हुई थी। मेरी चप्पल व पानी की दो भरी हुई बोतल पड़ी थी। मेरे मम्मी पापा जब मुझे लेने पहुँचे तब उन्होने व मैने यह सभी सामान पड़ा हुआ देख लिया था। मैने घर पर आकर मुँह हाथ नही धोया न फ्रेश हुई। मै करीब दस मिनट घर पर रूकी थी। मैने पापा को थोडी सी घटना रात वाली बतायी थी। मैने अपने पापा को यह बता दिया था कि गोलू उर्फ इरफान मुझे पकड़कर ले गया पकड़ने वालो मे दूसरा इरफान भी था दो लोग और थे। पिताजी को मैने इस दस मिनट के दौरान यह बताया था कि इरफान उर्फ गोलू और दूसरा इरफान ने मुझे पकड़कर खण्डर ले गये और खण्डर मे चार लोग हो गये वहां मुझे शराब जबरदस्ती पिलाई व चार लोगो ने मेरे साथ दुष्कर्म किया। फिर मेरे मम्मी पापा मुझे लेकर रिपोर्ट करने थाने गये। कोई प्रार्थना पत्र घटना का लिखके थाने मेरे पिताजी नही गये थे। बल्कि ऐसे ही गये थे। थाने पर जब हम पहुँचे तब वहां पर इन्सपेक्टर रज्जाक व दरोगा सिपाही मौजूद थे। दरोगा जी से मेरे पिताजी ने घटना बतायी थी मुझसे दरोगा जी ने घटना के बारे मे कुछ नही पूछा था। हम थाने पर 7.30 बजे सुबह पहुंच गये थे। और दिन मे 2 बजे तक रहे थे। मै बातचीत करने मे उस समय सक्षम थी। मेरी शरीर पर चोटे थी मेरे पिताजी के बताने पर थाने मे घटना की रिपोर्ट लिखली गई और मेरी डाक्टरी कराने सरकारी अस्पताल चरखारी भेजा गया। जब मेरे पिताजी थाने मे रिपोर्ट दर्ज करा रहे थे तब मै अपने पिता के पास मौजूद थी। पिताजी ने इरफान उर्फ गोलू के

खिलाफ केवल मारपीट की रिपोर्ट दर्ज कराई थी। मैने पापा को लिखाते समय नही रोका था कि मारपीट के अलावा बलात्कार की भी रिपोर्ट क्यो नही कर रहे हो। जब मेरा डाक्टरी परीक्षण कराने सिपाही ले गयी थी तब मैने वहां भी डाक्टरो व सिपाहियो को बलात्कार की घटना की बात नही बताई। मैने थाने पर अस्पताल मे दरोगा पुलिस व डाक्टर को दुष्कर्म की बात भय के कारण नही बताई थी।"

40. Later on, in her cross-examination dated 28.10.2015, the prosecutrix has stated:

"ग्यारह तारीख को ही रात्रि में 9.00 बजे ही मेरा सारा नशा उतर गया था और में पूरे होश हवास में हो गई थी। बारह तारीख को भी मैं पूरे दिन होश हवास में अपने घर पर रही और अपने माता पिता से बोलती चालती रही। होश में आने के ग्यारह तारीख को ही घटना के बारे में मैंने अपनी मां को बता दिया था। मेरे पिता को घटना के बारे में ग्यारह तारीख को ही पता चल गया था। दिनांक बारह तारीख को मेरे माता पिता ने पुलिस व अन्य किसी को घटना के बारे में नहीं बताया था। तेरह तारीख को सुबह नौ बजे हिन्दू युवा वाहिनी के कार्यकर्ता मेरे घर पर आये थे। आठ दस कार्यकर्ता आये थे। उनमें से भारतीय जनता पार्टी के नेता जगदीश परिहार तथा पूर्व चेयर मेन नगर पालिका पर० के अरविन्द सिंह चौहान भी आये थे। इन लोगो से मेरे मम्मी पापा ने बात की थी मैंने इनसे बातचीत नहीं की थी। मेरे माता पिता ने इन लोगों को घटना के बारे में जानकारी दी थी हिन्दु मुस्लिम के बारे में नहीं बताया था। मुझे यह पता कि अरविन्द सिंह चौहान चरखारी के बड़े वकील हैं। मैंने घटना करने वालों में गोलू का ही नाम बताया था और मुल्जिमानों के नाम मुझे मालूम नहीं थे। इसलिए नहीं बताये थे। हिन्दु युवा वाहिनी के कार्यकर्ता आदि हमे थाने लेकर गये। इन लोगों ने थाने पर इन्सपेक्टर के खिलाफ नारेबाजी नहीं की। रिपोर्ट लिखने के लिए इन्सपेक्टर से कहा था। प्रदर्श क-1 मैंने किसी के बोलने व बताने से नहीं लिखी थी बल्कि मेरे साथ जो घटना हुई थी वही मैंने अपने मन से लिखी थी पिता जी ने भी नहीं बोली थी। थाने मैं तहरीर मैंने इन्सपेक्टर साहब के सामने लीखी थी।"

41. The appellants' case that the prosecutrix changed the case from one of simple assault into gang-rape, discrediting the prosecution altogether, cannot be accepted. Appreciation of evidence, particularly the conduct of parties, cannot be tested on predetermined models of some standard behaviour. A victim, like the prosecutrix, can behave very differently, according to the socioeconomic background, the society where she stays, the kind of village, town or city she lives in, and many other similar and relevant factors. The prosecutrix's father is a Class-IV employee working with the Block Development Office and her mother, a mid-day meal worker. She herself is a student of B.A. Final Year at the Government Girls College, Charkhari. Charkhari is a small town, governed by a *Nagar Palika*. In these circumstances, for the prosecutrix or her parents to report with promptitude the gruesome offence of gang-rape, is a tall order.

42. There might have been circumstances, where the first informant and the prosecutrix would have straightaway reported or *dehors* any strengthening or prompting circumstances, they could have still reported due to individual characteristics of personality, or inexplicable and myriad factors. But, if the informant and the prosecutrix hesitated in straightaway reporting suffering gang-rape, and, did it a day later, when supported by members of the society, may be activists or even a political party, it does not mean that the prosecutrix changed her case from assault to gang-rape. The prosecutrix is a 20 year old small town girl, coming from a modest background, which we have already explained. She would have felt devastated to face the gruesome crime while still a college student and an unmarried woman. The parents too would have been shocked out of their wits. The fact that the parents and the prosecutrix went to the police station, but made a complaint about assault alone – not rape – does not predicate falsehood on the totality of evidence and circumstances. It is the result of a tug between a outraged conscience and hurt

soul, on one hand, and the thoughts of practical sagacity, that would have dictated a cautious course.

43. The reason given out for not reporting rape earlier and in the first instance by the prosecutrix was shock and fear. The first informant, who is the father of the prosecutrix, has given a different explanation. A varying explanation, though not essentially different, would show that a day's time was required for the prosecutrix's family, including herself, to reconcile, resolve and report. It is not a case where the offence has been reported weeks or months later. A day's time for the prosecutrix and her parents to firm up and report to the police that indeed a young woman was the victim of gang-rape, is the result of an inhibitive behaviour, in the circumstances, that in no manner suggest falsehood for the prosecution.

44. Appreciation of evidence in a criminal case requires an understanding of things as they happen for an average person. We cannot overlook the fact and must take judicial notice of it too that there is extreme reluctance on the Police's part to promptly register particular kinds of offences, including some heinous ones. One of the 'reluctant categories', unfortunately, is rape, particularly gang-rape. There is a general hesitation amongst officers of the Police at the lower rungs, that is to say, at the station level, to register crimes promptly that portray a bad law and order situation. A gang-rape invites public outrage and is often seen that the Police try to downplay or ignore the crime. In this case, there is something telltale, though not essential to dwell upon, which would make us think that the FIR came a day later, not because the prosecutrix or the first informant necessarily hesitated, but because the Police were initially reluctant to register the gruesome crime.

45. If by the contents of the NCR, the only fact brought to the notice of the Police were a simple assault, perhaps they would not have sent the prosecutrix after the examination of her external injuries at C.H.C. Charkhari to the District Hospital for an internal examination. It appears that facts were brought to the notice of the Police at the Station, including the S.H.O., who was in double mind to register the gruesome crime. Once, the internal examination did not reveal any ostensible injury in consequence of the ravishment, the Police thought of drawing curtains on the matter with an N.C.R. The intervention of local leaders of the Ruling Party and the Hindu Yuva Vahini was apparently not a prompt to the informant or the prosecutrix to falsely report gang-rape. Possibly, it could not be. No one at the prompt of a political party, particularly a young woman of 20 years in a small town, like Charkhari, would come up with a case of gang-rape, placing herself at the receiving end of the offence. This is not a case, where a highly influential man was being charged. The appellants are like the prosecutrix, persons not from the influential strata of society. All, except one, were not even known to the prosecutrix. There is no reason, therefore, why at the instance of some activists or a political party, the prosecutrix would implicate men of ordinary pursuits, exposing herself to the social frown of a small-town society. What really appears to have happened is that the intervention of some influential men of the society enabled the first

informant and the prosecutrix, not only to forcefully place their charges before the Police for all that the prosecutrix had suffered, but at the same time, brought sufficient pressure on the Police to register, what was already within their knowledge.

46. In our considered opinion, therefore, there is nothing to blemish the prosecutrix's version or the prosecution on ground that an earlier N.C.R. merely reported assault. Whatever has come by for this change, is logical and inspires confidence.

2. If the uncorroborated testimony of the prosecutrix can lead to conviction.

47. In this case, like many others, where a young woman is ravished, the presence of an eye-witness, except the victim herself, is a rare phenomenon. In the nature of things, a crime of this kind happens, unlike homicide, assault or robbery, away from the eyes of any possible witness. In a few cases where there is an eye-witness account, the witness is more often than not a feeble and non-threatening person to the offender or offenders, who can be ignored. This too is a rare occurrence. Amongst the rare of most cases, where an eye-witness account is forthcoming, the witness's presence is lurking and unknown to the offender or offenders. Therefore, what is left for an eye-witness account is that of the victim herself, which has been placed by the law at par with the testimony of an injured witness. The testimony of the prosecutrix is invariably to be accepted without corroboration unless there is some such inherent flaw or contradiction that the truth of it becomes difficult to accept. If, therefore, the testimony of the prosecutrix inspires confidence with the Court, it may be accepted without corroboration. After all, a victim or a prosecutrix's testimony in a case of rape is not an accomplice's testimony, which may always require corroboration by a rule of prudence.

48. Undoubtedly, in the present case, the testimony of the prosecutrix about the crime is the sole eye-witness account. The testimony of others, is hearsay and circumstantial. In her examination-in-chief at the trial recorded on 10.07.2015, the prosecutrix has said:

"घटना 11 जनवरी 2015 की है। शाम को 7 बजे अपने पापा के लिये गुटका लेने घर के पास ही जा रही थी। वहां पर गोलू @ इरफान मिला, उसके साथ एक व्यक्ति और था जिसका नाम भी इरफान था। इन दोनो व्यक्ति ने मुझे पकड़ा और घसीटकर गफ्फार चच्चा की दुकान के पीछे खण्डहर मे ले गये। जब मुझे पकड़कर दोनो लोग खण्डहर ले जा रहे थे तब इरफान (दूसरे) ने मेरा मुंह बन्द कर दिया। खण्डहर मे दो लोग और पहले से बैठे थे, एक का नाम शानू ले रहे थे दूसरे का नाम नही बता सकती, मुंह बांधे था, मै पहचान सकती हूँ। शानू ने मेरे दोनो हाथ पकड़े व दूसरा जो मुंह बांधे था अपना चेहरा ढके था। ने मुझे जबरदस्ती मार मार कर शराब पिलायी। जब मुझे पूरी तरह से नशे मे कर दिया तो चारों ने बारी-2 से मेरे साथ बलात्कार किया। फिर मुझे चारों लोग मुझे वही खण्डहर मे छोड़कर चले गये। इसके बाद खण्डहर मे कोई नही आया साक्षी ने हाजिर अदालत मुलजिम जो हिरासत मे है, कहा कि यह इरफान है। हाजिर अदालत मुल्जिम रीतेश को देखकर कहा कि यह भी मोके पर था इसे शानू - शानू कह रहे थे, हाजिर अदालत कल्लू को देखकर कहा कि यह भी घटना के समय मौजूद था जो मुंह मे बांधे था। हाजिर अदालत गोलू @ इरफान को देखकर कहा कि यह भी मौके पर था। होश मे आने पर मैने अपने पिताजी को और किसी अभियुक्त का नाम नही बताया था। मै पूरी रात खण्डहर मे नशे की हालत मे पड़ी रही। होश मे आने पर मै चिल्ला रही थी तो पास मे से गुजरने वाले किसी व्यक्ति ने मेरे घर बताया तो मम्मी पापा आये और मुझे ले गये। फिर घर से उसी दिन पापा मुझे थाने ले गये और पापा ने वहां F.I.R. लिखायी। F.I.R. के काफी दिन बाद पुलिस ने मेरा बयान लिया था। मेरी डाक्टरी पहले चरखारी मे हुयी थी फिर महोबा मे हुयी थी। गवाह ने कागज सं० 9क देखकर कहा कि शशिप्रभा नाम की महिला कांसटेविल ने लिखा था और कहा था कि इस पर हस्ताक्षर बना दो, मैने दस्तखत बना दिये थे। इस पर प्रदर्श क-4 डाला गया।"

49. In her cross-examination, generally, the prosecutrix has not wavered from the facts that she was ravished by four men and that she was abducted within minutes after she stepped out of her home on 11.01.2015 at 7.00 p.m. to buy *gutkha* for her father. She has maintained consistency about the place she was taken to by the appellants to realize their evil intent, and, generally, the manner of occurrence. There is a consistent story about the prosecutrix being forced to imbibe alcohol and then ravished through the night by four men while she was under the influence of liquor. The circumstances of her recovery the following morning from the specified scene of crime, that is to say, the ruins behind Gaffar's shop, by none other than her parents, who had come there upon information by a passerby, supports the prosecution by circumstances. The recovery of liquor bottles, cigarette butts, the prosecutrix's footwear, water bottle, are all consistent with the prosecutrix's version, which inspires confidence. This is, therefore, not a case where there might be some such inconsistency or flaw in the prosecutrix's account of the happening that the Court may seek corroboration from an eye-witness; and, failing that, feel disinclined to act on the prosecutrix's uncorroborated testimony. The prosecutrix's testimony is all the more worthy of acceptance because she is a young woman of 20 years, student of a senior class, on the verge of graduation. She possibly cannot be said to suffer from the handicap of her mental faculties being feeble on account of young age, or the resultant non-understanding of what befell her.

50. As to the principle that the prosecutrix's uncorroborated testimony, if consistent, and disclosing details of the incident as well as participation of the accused, can be accepted, we may refer with profit to **Lok Mal alias Loku v. State of U.P., (2025) 4 SCC 470.** In **Lok Mal alias Loku,** it was held by the Supreme Court:

"12. Though learned counsel for the appellant, submitted before this Court that the oral evidence is unacceptable being the testimony of interested witnesses, we are unable to accept the submissions of the learned counsel for the simple reason that the evidence of the prosecutrix is wholly trustworthy, unshaken and inspires confidence. Admittedly, the prosecutrix was a major girl studying in first part of BA at the time of the incident. Though she was subjected to detailed cross-examination, she stood firm and unshaken disclosing the incident in detail regarding the presence and participation of the accused in ravishing her."

51. Here also, the prosecutrix is a student of the final year of BA, like the victim in Lokmal, a major, who has withstood searching cross-examination on behalf of the appellants, to discredit her and come out with a consistent version of the occurrence, unscathed by the cross-examination.

52. In **State of Uttar Pradesh v. Chhotey Lal, (2011) 2 SCC 550,** it was observed by the Supreme Court:

"22. In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the

crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

23. In State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court at SCC p. 559 of the Report said: (SCC para 16)

"16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

24. In State of Punjab v. Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] this Court made the following weighty observations at pp. 394-96 and p. 403: (SCC paras 8 & 21)

"8. … The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix … The courts must, while

evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case … Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury … Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances….

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21. … The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

25. In Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , decided recently, this Court referred to the above two decisions of this Court in Chandraprakash Kewalchand Jain [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] and Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] and also few other decisions and observed as follows: (Vijay case [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , SCC p. 198, para 14)

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

26. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in

somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

27. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows: (SCC p. 224, para 9)

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyse the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot, therefore, be identical.""

53. There is, thus, on principle no fetter on the Court accepting the prosecutrix's testimony, uncorroborated by that of another. The testimony, we have already remarked, is consistent and dependable and one that inspires confidence. It is, therefore, held that the uncorroborated testimony of the prosecutrix alone in this case can be accepted in support of the prosecution.

3. Whether non-holding of Test Identification Parade in a case where accused is not known to the prosecutrix, who identifies him for the first time in the dock, vitiates conviction.

54. This is a case where one of the appellants was known to the prosecutrix, but not the others. Whatever acquaintance, she claims about the other appellants, is one from the scene of crime. As would be seen presently, the evidence shows that the crime scene was not well illuminated. It was a dark hour of a wintry night, where the fog would have made visibility worse. A person known beforehand, even an acquaintance, could have been identified by the prosecutrix, the violence of the crime notwithstanding, but not an utter stranger. To add to it is the fact that besides the few moments that occupied the time that she was whisked away to the scene of crime and then made to imbibe alcohol forcibly

after an assault, her faculties of cognition would have been overtaken by alcohol, which the prosecutrix says, kept her under a stupor through the night. There would, thus, be hardly any chance of identifying any of the strangers, who were the perpetrators, well enough for the prosecutrix to identify them dependably for the first time in the dock, when she saw them. This is a case, where no Test Identification Parade (TIP) was held before the prosecutrix confronted the appellants in the dock. It was during trial, admittedly, that the prosecutrix saw the appellants, the next time after the occurrence. There was no TIP held with the necessary precaution to ensure that the prosecutrix, in fact, recognized those of the appellants, who were strangers to her.

55. Going by the prosecutrix's testimony, there was one appellant alone, she knew beforehand. He was Irfan @ Golu son of Habib. This acquaintance came about because the prosecutrix had a shop selling clothes, located in the Nazarbad market. She would open and close shop and run the business. Close to the shop, Irfan @ Golu's brother had a gas-cylinder shop, where Irfan @ Golu would frequent. The prosecutrix had watched him there, and according to her own saying, was sufficiently acquainted with him for the said reason. In this regard, the prosecutrix's testimony, recorded during her cross-examination dated 24.09.2015, may be referred to. It reads:

"घटना के पहले मेरी नजरवाग मार्केट मे कपड़े की दुकान थी। दुकान खोलने बंद करने व चलाने हेतु मै जाती थी। मैने यह दुकान चार महीने चलाई है। मेरी इस दुकान के पास अभियुक्त इरफान उर्फ गोलू की कम्प्यूटर व इंटरनेट की दुकान नही थी। घटना के पहले मे इसको अपनी दुकान के पास देखती रहती थी। मेरे बगल मे इसके भाई की गैस सिलेण्डर की दुकान सलेण्डर है। वहां आता जाता था इसलिये मै जानती थी।"

56. So far as the appellant, Irfan son of Shahzade is concerned, the prosecutrix in her testimony dated 24.09.2015 has stated thus:

"मैं घटना के पहले से इरफान पुत्र शहजादे को नहीं जानती थी।"

57. In her testimony dated 28.10.2015, it is said about Irfan son of Shahzade by the prosecutrix:

"मेरे पापा के पता कराने पर दूसरे इरफान s/o शहजादे को जानकारी हुई थी। मुझे मालूम है कि मेरे पिताजी घटना में शामिल इरफान S/o शहजादे के बारे में रिपोर्ट दर्ज कराने के पहले पता कर आये थे । मेरी तहरीर प्रदर्श क-1 में इरफान S/o शहजादे का नाम नहीं लिखा है। इरफान S/o शहजादे का प्रदर्श क-1 में नाम न होने की मैं वजहा नहीं बता सकता हूँ। रिपोर्ट लिखने के बाद महिला पुलिस कर्मी ने मेरे घर आकर पहली बार ब्यान लिये थे कितने दिन बाद लिये थे मैं नहीं बता सकती। जब मेरा धारा 161 सी.आर.पी.सी. का ब्यान प्रदर्श क - 4 महिला कास्टेबल द्वारा अंकित किया गया था उससे पहले ही मुझे इरफान S/o शहजादे के नाम की जानकारी हो गई थी।"

58. So far as the appellant, Manvendra Singh @ Kallu is concerned, the prosecutrix has stated in her cross-examination dated 03.11.2015:

"मैं चरखारी जीजी आई. सी. मे पढती रही हूँ। मैं कक्षा आठ से वारह तक वहा पढी हूँ मैं 2005 से 2009 तक मै जी.जी.आई.सी. में पढ़ी हूँ। जी.जीआई.सी. के सामने इलाहाबाद बैंक है। इसी इलाहाबाद बैंक में एकाउण्ट था। बैंक में पढाई के दौरान मेरा आना जाना होता था। मुझे इस बात की जानकारी नही है कि कल्लू उसी बैंक में अस्थाई रूप से आपरेटर के पद पर कार्य करता था। मैने कल्लू को बैंक में जाने पर एक आद बार देखा है मैं कल्लू को एक आद बार बैंक में देखा था। मैं उसका नाम नही जानती थी। मेरी कभी इससे बातचीत नही हुई। मैने जब मजिस्ट्रेट साहब को ब्यान दिया था तब कल्लू का नाम नही बताया था। जहा घटना हुई थी वहा अन्धेरा था बिजली का कोई प्रबन्ध नही था इन लोगो ने मोबाइल के सहारे रोशनी किये थे। मुल्जिम कल्लू को मैने घटना स्थल पर करीब आधे घण्टे तक देखा। घटना करने के बाद आधे घण्टे में चला गया। जब कल्लू घटना कर रहा था तब वह अपना मुंह

नाक के नीचे का भाग मफलर से बांधे था। उसकी आँखे और सर दिखाई दे रहा था। घटना के दौरान इसने मुझसे कोई बात चीत नही किया । मुझे अभी भी जानकारी नही है कि मुल्जिम कहा का रहने वाला है और उसके पिता का क्या नाम है। जब मुल्जिम अरेस्ट हुआ था तब मुझे थाने पर नही दिखाया था बल्कि थाने वालो ने मुझे बताया था कि तुम्हारे साथ घटना करने वाला मानवेन्द्र उर्फ कल्लू भी है। मै जेल मे कभी भी कल्लू की शिनाख्त करने नही गई हूँ। मैने घटना के बाद कभी भी पुलिस को कल्लू का नाम नही बताया। मैने अपनी एफ. आई. आर. में मुल्जिम कल्लू का कोई हुलिया नही लिखाया था। यह कहना गलत है कि मुल्जिम कल्लू ने मेरे साथ कोई घटना न की हो और ये पुलिस के कहने पर झूठी गवाही दे रही हूँ।"

59. It appears that the prosecutrix was confounded about the appellant, Ritesh's name, whom she considered to be Shanu, a fact that she has disclosed in her cross-examination dated 03.11.2015 at the instance of the acquitted man, Shanu son of Qasim. She spoke about this confusion relating to Ritesh being Shanu, thus, in her cross-examination:

"हाजिर अदालत अभियुक्त शानू मौके पर घटना में शामिल नही था। हाजिर अदालत अभियुक्त रीतेश को अन्य लोग शानू शानू कह रहे थे इसी आधार पर मैने अपने पिता को शानू नाम बता दिया था। इसी आधार पर मैने दरोगा जी को 161 के ब्यान में अभि शानू का नाम बताया था एवं इसी आधार पर मै जज साहब को 164 सीआरपीसी के ब्यानो में भी शानू का नाम बता दिया था। अभियुक्त सानू ने मेरे मारपीट और बलात्कार की कोई घटना नही की है।"

60. Regarding Ritesh to be Shanu, the prosecutrix has said in her cross-examination dated 24.09.2015:

"शानू अभियुक्त को मैने घटना के समय जाना था पहले से नही जानती थी"

61. She has further on said in her cross-examination on the same day:

"रीतेश S/O भवानीदीन मेरे मुहल्ले अमरगंज में मेरे मकान से तीन-चार मकान छोड़कर नही रहता है। रीतेश किस मोहल्ले में रहता है मुझे पता नही है। घटना के करीब एक माह बाद होमगार्ड रश्मि चौरसिया ने मेरा ब्यान लिया था या नही मुझे याद नही है। यदि होमगार्ड रश्मि चौरसिया ने कागज सं. 22क पर मेरे ब्यान में बलात्कार करने वालो मे रीतेश का नाम लिखा हो तो मैं इसकी वजह नही बता सकती क्योंकि मैने पूरी विवेचना के दौरान विवेचक को व मजिस्ट्रेट के सामने बलात्कार करने वालो मे रीतेश का नाम नही बताया था। कागज सं. 22 क को देखकर कहा कि इस पर मेरे हस्ताक्षर है। यह कागज इन्सपेक्टर रज्जाक ने मेरे हस्ताक्षर एक कमरे पर बनवाये थे उस समय इस कागज पर कुछ लिखा नही था। मुझे यह भी नही पता कि रीतेश उपरोक्त किस जाती का है। मुझे यह भी नही पता कि रीतेश बैंक मे कर्मचारी है।"

62. The aforesaid stand of the prosecutrix in the cross-examination places matters beyond pale of doubt that out of the four appellants, she did not know Irfan son of Shahzade, Ritesh @ Shanu or the one whom she called Shanu and Manvendra @ Kallu. As already remarked, she saw them at the time of occurrence and then identified each of them in the dock. During this period of time, again as already remarked, no TIP was held. There was, thus, no early authentication of the fact if the prosecutrix could identify the three appellants, Irfan son of Shahzade, Ritesh @ Shanu, Shanu and Manvendra @ Kallu. So far as the appellant, Irfan @ Golu is concerned, he was a prior acquaintance and about his identify, there is no cavil.

63. The law about a first time identification of unknown assailants in the dock without an intervening Test Identification Parade is fairly well-settled and has been summarized recently by the Supreme Court in **P. Sasikumar v. State of T.N., (2024) 8 SCC 600.** In **P. Sasikumar** (*supra*), a case under Section 302 IPC, where the assailants were not known beforehand to the witnesses, it was observed by the Supreme Court:

"19. The incident is of about 7.00 p.m. on 13-11-2014 and both of them were

arrested at around 10 p.m. on 15-11-2014. The case of the prosecution is that while they were being arrested, they received injuries as they tried to escape and consequently, they were taken to the hospital for treatment. It was in the hospital, that PW 1 i.e. father of the deceased and the complainant and PW 5 were taken by the investigating officer who are said to have identified the two accused as the one who had committed the crime. No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done.

20. In fact, the High Court has recorded this flaw in the investigation at more than one place in its judgment. It has again observed that the investigating officer (PW 24) was before the Court and in spite of being questioned as to what the reasons were for not holding TIP in this case, no satisfactory reply was given by him.

21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in court during trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismisses the identification made by PW 1 for the reason that the appellant i.e. Accused 2 was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW 1 made for the first time in the court was not proper.

22. However, the High Court has believed the testimony of PW 5 who has identified Accused 2 under similar circumstances! The appellant was also stranger to PW 5 and PW 5 had also seen the accused i.e. the present appellant for the first time on that fateful day i.e. on 13-11-2014 while he was wearing a green-coloured monkey cap. The only reason assigned for believing the testimony of PW 5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning.

23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see : Kunjumon v. State of Kerala [Kunjumon v. State of Kerala, (2012) 13 SCC 750 : (2012) 4 SCC (Cri) 406]).

24. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

25. The relevance of a TIP, is well-settled. It depends on the facts of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case.

It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in Rajesh v. State of Haryana [Rajesh v. State of Haryana, (2021) 1 SCC 118 : (2021) 1 SCC (Cri) 327] and therefore TIP may not be necessary. It is the task of the investigating team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

26. The relevance of TIP has been explained by this Court in a number of cases (see : Ravi Kapur v. State of Rajasthan [Ravi Kapur v. State of Rajasthan, (2012) 9 SCC 284, para 35 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107], Malkhansingh v. State of M.P. [Malkhansingh v. State of M.P., (2003) 5 SCC 746, para 16 : 2003 SCC (Cri) 1247])."

(emphasis by Court)

64. It is almost impossible for the prosecutrix to have identified the appellant, Manvendra @ Kallu, who admittedly had his face covered by a scarf during the entire episode. The other appellants too, i.e. Ritesh @ Shanu and Irfan @ Shahzade, who were admittedly not known to the prosecutrix beforehand, we have already noticed, had slender chances of identification in the dock because of various factors, that we have noted, such as poor visibility, the brief contact between these appellants and the prosecutrix not being in a fully conscious state. After all, she was, as she says, semiconscious due to the effect of liquor. Her evidence cannot, therefore, be considered as regards identity of the appellants to be of that sterling quality, which may be depended upon, on the basis of a dock identification alone, without a TIP being held.

65. Here, reference may be made to the remarks of the Supreme Court in **Devinder Singh and others v. State of H.P., (2003) 11 SCC 488,** also a case of gang-rape by multiple offenders, where the prosecutrix had a fleeting glimpse of the offenders by torch light. In **Devinder Singh** (*supra*), it was observed by the Supreme Court:

"21. In the course of her deposition though the prosecutrix stated that she had seen their faces in the torchlight after they had raped her, and had narrated the manner in which they discovered the torch and the battery cells, more or less in the same manner as in the first information report, from her deposition it appears that the torch was lighted only for a short duration. In the course of her cross-examination she admitted that for want of light she could not give particulars of the persons who put her on the cot or the person who raped her first. Reading of the deposition of this witness leaves no room for doubt that while the appellants committed the offence, there was no light in the room. In view of these circumstances even if it is accepted that the prosecutrix had a fleeting glimpse of the appellants when they lighted the torch in her room, in the absence of any other evidence to show that the prosecutrix had occasion to see the appellants earlier, or to know them, it was incumbent on the prosecution to hold a test identification parade. This is not a case where an occurrence took place in broad daylight and the prosecutrix had ample opportunity of noticing the features of the appellants. This apart, her naming some of the accused persons in the first information report and

not naming them in the course of deposition casts a serious doubt on the veracity of this witness. Further, she named two other persons, and not two of the accused, in her report, and failed to name the accused whom she claimed to know from before as stated in her deposition."

(emphasis by Court)

66. All that we can accept the prosecutrix's evidence for is that there were four men involved, who committed the crime, but we cannot accept it for the identity of all four of them in the absence of a TIP being done before trial. We are of opinion that the identity of only one of the perpetrators is established and he is appellant, Irfan @ Golu. We are, therefore, of opinion that this was a case, where a TIP ought have been held in order to bring home the guilt against the three appellants, who are strangers to the prosecutrix, to wit, Irfan son of Shahzade, Ritesh @ Shanu and Shanu and Manvendra @ Kallu. The identification of these three appellants, being very doubtful in the absence of a TIP, they would be entitled to its benefit.

4. If a single person can be convicted of the offence of gang-rape, where factum of the offence being committed by one or more persons, constituting a group or acting in furtherance of a common intention, is established, but the multiple accused put on trial are acquitted for lack of identification.

67. This question is involved in the present case inevitably because we find on the evidence of the prosecutrix that she is dependable and consistent about the fact that she was ravished by four men, but on account of various factors, that we have already adverted to, her testimony about the identification of the appellants, except one, is doubtful. The one, who has been held by us to be unmistakably identified by the prosecutrix, is Irfan @ Golu, but for the other appellants, we have held that their identification is not free from doubt, of which they must receive benefit. On this state of evidence and our findings, the question is if the sole appellant, Irfan @ Golu can be convicted of the offence of gang-rape. The law seems to be fairly well settled that he can be.

68. The principle that an offence, requiring the participation of a group of offenders, where the factum of a group perpetrating the offence was established, but the guilt could be brought home against a solitary accused, could still lead to conviction of the solitary man for the offence involving multiple participation, has come to be well-acknowledged in cases of dacoity. Dacoity requires the participation of five or more persons and there are instances, where the requisite numbers of accused are arraigned and put on their trial, but the evidence leads to conviction of one alone. The question in such cases that in yesteryears drew judicial attention was if the solitary man found guilty, could be convicted of dacoity, where others, constituting the requisite number, were acquitted. This question arose in the context of a charge of dacoity, dacoity with murder and gang-rape as well, gang-rape being punishable, at the relevant time, under Section 376(2)(g) IPC, before the Supreme Court in **Manoj Giri v. State of Chhattisgarh, (2013) 5 SCC 798**. The facts in **Manoj Giri** (*supra*) figure in paragraph No.2 of the report, which read:

"2. According to the prosecution, on the fateful night of 25-1-2004 at about 9 p.m., the prosecutrix (PW 1) was returning

with her husband, namely, Ganesh Sahu (PW 2) on the bicycle from Village Gatauri along with her father-in-law, Domara Sahu (since deceased) on other bicycle from Village Mohtarat after taking her treatment. It was a lonely road and as they were passing by Koshtha pond at Village Mohtarat, someone focused a torchlight on them and then hurled abuses and stopped them. Then two more persons reached there and caught the cycle of Ganesh Sahu and stopped him. Two other persons stopped the cycle of Domara Sahu. One person inflicted iron rod-blow to Ganesh Sahu and another slapped Domara Sahu. They took the prosecutrix, her husband and Domara Sahu towards the field and threatened that they would be killed if they cried out. Ganesh Sahu was beaten senseless and his hands and legs were tied up with a lungi. Domara Sahu was also beaten senseless. Those persons threatened the prosecutrix and took off her sari and undergarments and then raped her one by one. One of them had tied her legs and raped her, another untied her while raping her. Subsequently, after tying her up, they sat for some time and then ran away. Somehow she untied herself and untied her husband and they reached the house of one Raj Kumar Suryavanshi, who gave them shelter. She narrated the incident to Raj Kumar Suryavanshi, who sent Ashok Kumar (PW 13) to lodge the FIR at about 2.00 a.m. Domara Sahu who had been carried to local hospital, died at about 4.35 a.m."

69. The event in the Trial Court and non-challenge to the acquittal of four of the five accused by the State, is described thus in the report in **Manoj Giri:**

"11. The trial court considered the evidence and came to the conclusion that the accused were properly identified by the prosecutrix and with regard to whom there was sufficient evidence available for conviction held them guilty under Sections 395, 396, 397, 398 and 376(2)(g) IPC. As regards the other accused, the trial court came to the conclusion that the evidence against them was insufficient and contradictory and after the detailed discussion came to the conclusion that it was not possible to convict them mainly on the ground for want of identification. They were thus acquitted.

12. The State did not file any appeal against the acquittal of the other accused. The appellant Manoj Giri, however, filed an appeal to the High Court. Before us, this appeal has been filed against the said judgment."

70. It was in the context of these facts that about the solitary conviction of Manoj Giri on the charge of dacoity with murder, where others were acquitted for lack of identification, it was held by the Supreme Court:

"15. With regard to the appellant's conviction under Section 396 IPC for the murder of Domara Sahu in the case of dacoity, it was contended by the learned counsel for the appellant that since the other four accused who have been similarly charged were acquitted of the offence of dacoity, it would not be legal and proper to convict the appellant of the said charge. The argument is based on the presupposition that a conviction for dacoity with murder can be maintained only when five or more persons are convicted. Section 396 IPC reads as follows:

"396. Dacoity with murder. –If any one of five or more persons, who are conjointly committing dacoity, commits

murder in so committing dacoity, everyone of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

This contention cannot be upheld in view of the observations made by this Court in Raj Kumar v. State of Uttaranchal [Raj Kumar v. State of Uttaranchal, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] which read as follows: (SCC p. 715, para 21)

"21. It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons–or even one–can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity."

(emphasis in original)

16. The observations in Raj Kumar case [Raj Kumar v. State of Uttaranchal, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] squarely apply to this case. Domara Sahu was killed in the assault by the five accused. The evidence against the other four was not sufficient to convict them. There is no doubt, the murder was committed during the conjoint commission of dacoity. If properly convicted each one of them were liable to be punished with death vide Section 396 IPC. Since that has not happened the conviction of five persons–or even one–can stand. We have, therefore, no hesitation in maintaining the conviction of the appellant for the incident in which there was a gang rape, dacoity and a wanton murder of the hapless father-in-law."

71. The principle in **Manoj Giri**, applicable to a case of dacoity and dacoity with murder, where the factum of participation by the requisite number of men in the crime, was well established, but the others were acquitted for lack of identification, permitting conviction of the solitary man found guilty of the offence that could be committed by a group alone, would squarely apply to a case of gang-rape, provided the factum of participation of multiple offenders, is established, but a solitary perpetrator's identity could alone be established. The question received the attention of a Bench of the Andhra Pradesh High Court in **Kuruva Sreenivasulu v. SHO, Ullindakonda P.S., 2023 Supreme (AP) 47**, where two men were accused of robbery and gang-rape, but the identity of one of them alone could be established by the prosecution. It was in this context held in **Kuruva Sreenivasulu** (*supra*):

"12) The argument of the learned Counsel for Accused No. 1 that, if any benefit is given to Accused No.2, Accused No. 1 cannot be convicted for an offence of gang rape, is ill-founded.

Merely because one of the accused is acquitted due to lack of proper evidence, it does not mean that the incident in question was committed only by one

person. It is to be read as if it was committed by a known and one unknown person."

72. A similar issue, though not identical, arose before a Bench of the Delhi High Court in **Praveen v. State of NCT of Delhi, 2025 SC OnLine Del 5583**, where a charge of gang-rape on a woman under 16 years of age, amongst others, was brought against two men, one of whom absconded and could not be brought to trial. His complicity on evidence was established and so also the case of gang-rape, involving two men, but one alone could be convicted. It was urged before their Lordships of the Division Bench in **Praveen** (*supra*) that the other accused having absconded, the solitary man put on trial could not be convicted of the offence of gang-rape. Repelling the appellant's contention in **Praveen**, Rajneesh Kumar Gupta, J., speaking for the Bench, held:

"20. One of the arguments of the Appellant is also that as the alleged coaccused Kalu has not been arrested and only the Appellant has been convicted for the alleged offences, therefore, it is not the case of a gang rape. For the offence to be a gang rape, it must be that the Prosecutrix has been sexually assaulted by more than one person.

20.1 This argument is without any merit, as one offender can be convicted for gang rape, if the other offender managed to escape and could not be apprehended. On this aspect, it is relevant here to mention the judgment of Kailash Lal Singh Khangar v. State of Madhya Pradesh, ILR 1996 MP 446. The relevant paras of the said judgment are as follows:

"12. In such circumstances, when two persons are said to have committed rape upon a minor girl of aged 13 years at the times of the incident, it comes within the category of gang rape and there is no reason to discredit any of the prosecution witness in this incident.

13. Appellant had stated in his examination under Section 313, Criminal Procedure Code that he has been falsely implicated at the instance of one Bhagwansingh. But no evidence in defence has been led on this point.

14. The trial Court rightly came to the conclusion that the appellant was found guilty of committing rape upon Kumari Mathi, a minor girl of 13 years of age, which has been proved by her statement and medical evidence. The appellant was immediately arrested on the spot by the witnesses, reaching on the cries of the prosecutrix. The other-co-accused Lalu Thakur had managed to escape and could not be apprehended.

Therefore, in such a situation, it was a case of a gangrape and the appellant was certainly guilty. The trial Court had rightly convicted the appellant under Section 376, Penal Code, 1860."

73. Given this position of the law, we are of opinion that there is no impediment in holding the appellant, Irfan @ Golu alone, whose identity has been well established as one of the perpetrators, guilty of the offence of gang-rape. This is so because the involvement of four offenders is also well established, but their identity is the subject of a reasonable doubt that must enure to their benefit.

4. Whether the absence of any injury on the prosecutrix's private part in a case of gang-rape, can or must lead to the inference of non-complicity/ falsehood of the charge.

74. A point was emphatically made on behalf of the appellants that in the absence of an injury being sustained by the prosecutrix to her private part, a case of rape, much less gang-rape, cannot be accepted. Reliance has been placed on **Lilia alias Ram Swaroop** (*supra*), where acquitting the accused of the offence of rape under Section 376 IPC, their Lordships of the Supreme Court held:

"4. We have gone through the evidence in the matter as also the reasons recorded by the courts below. Admittedly the prosecutrix was a married woman. She has given a story that as she was on her way to deliver lunch to Madan Lal (PW 4) she had been waylaid by the appellant and he had then thrown her on the ground and raped her and that she had resisted and had got cut injuries as the glass bangles that she was wearing had broken during the commission of rape. The story projected by Madan Lal which is said to be corroborative of her statement is, however, difficult to believe. He says that he had seen the rape being committed for about fifteen minutes from a vantage point a short distance away but he had not made any attempt to rescue his sister-in-law. He further stated that one Inder Singh who was with him was also an eyewitness.

5. Admittedly, Inder Singh who could be said to be an independent witness, has not been examined. Some corroboration could have been found in the medical evidence if it had supported the prosecution story. The doctor however found no injury on the person of the prosecutrix though she was examined within two days of the incident. In the light of the fact that the story projected by the prosecution is on the face of it unacceptable and rather far-fetched and does not find corroboration from the medical evidence as well, on a consideration of the cumulative effect of all the circumstances, we are of the opinion that a case of rape has not been proved beyond reasonable doubt."

75. Injury to the private parts of a rape victim is not always necessary as evidence to establish the offence of rape, including gang-rape.

76. The absence of injury to the prosecutrix's private parts can primarily be the result of non-employment of force in perpetration of the crime. This can come about on account of various factors, particularly, the victim being put in fear to an extent that she did not resist the act. The other possibility could be that the victim being unconscious or semiconscious due to the deleterious effect of an intoxicating substance, like alcohol or any other drug did not offer resistence. In the present case, the testimony of the prosecutrix shows that she did resist until time when she was whisked away to the scene of crime and forced to imbibe alcohol. The external injuries that the prosecutrix sustained were mostly the result of assault and force used to make the prosecutrix imbibe alcohol. Some of the external injuries could be the result of the hard ground etc., where the prosecutrix lay and suffered the offence.

77. The fact, that the prosecutrix did not sustain any injury to her private parts, is clearly attributable to the fact that she was semiconscious and under the stupefying effect of the alcohol that she was forced to

imbibe by the offenders. The resultant non-resistance from a semiconscious prosecutrix would exclude the possibility of injury to her private parts. In **Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191**, also a case of gang-rape, it was observed by the Supreme Court:

"***Injury on the person of the prosecutrix***

25. In Gurcharan Singh v. State of Haryana [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] this Court has held that : (SCC p. 753, para 8) the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of violence or stiff resistance in the present case may as well suggest helpless surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the definition of rape.

26. In Devinder Singh v. State of H.P. [(2003) 11 SCC 488 : 2004 SCC (Cri) 185] a similar issue was considered by this Court and the Court took into consideration the relevant evidence wherein rape was alleged to have been committed by five persons. No injury was found on the body of the prosecutrix. There was no matting on the pubic hair with discharge and no injury was found on the genital areas. However, it was found that the prosecutrix was used to sexual intercourse. This Court held that the fact that no injury was found on her body only goes to show that she did not put up resistance."

78. Also reference may be made to a Bench decision of the Gauhati High Court in **J. Lalruatsanga v. State of Mizoram and another, 2020 SCC OnLine Gau 4897**, where in the context of a gang-rape and the absence of injury to the prosecutrix, it has been observed:

"33. In the case of Lalliram (supra), the Apex Court in the case of gang rape held that when the allegation is of rape by many persons and several times but no injuries is noticed, it certainly would be an important factor. Although, it is true that injury is not a sine quo non for deciding whether rape has been committed but it has to be decided on the factual matrix of each case. If the court finds it difficult to accept the version of the prosecutrix on face value, it may search for evidence direct or circumstantial. In so far as the present case is concerned, the evidence on record would go to show that the accused-persons threatened the prosecutrix with a knife telling her that her throat would be cut if she resisted. Under such circumstance, the prosecutrix apparently out of fear may have surrendered to them. Apart from the underwear and the boxer shorts of the prosecutrix being tom, the evidence on record does not show that the accused-persons applied force unlike the case in Lalliram (supra), wherein the prosecutrix who was said to be four months pregnant at the time of occurrence was caught hold of by her bunch of hair and dragged for a considerable distance. As may be noticed, the facts in the present case are not similar. The evidence on record does not show use of forceful violence and, therefore, the absence of injury from the person of the prosecutrix cannot be the ground to disbelieve her testimony, which are also corroborated by the other prosecution witnesses.

34. In the case of Joseph S/o Kooveli Poulo (supra), the Apex Court held that the charge under section 376, IPC was

mainly fastened upon the appellant only on the basis of 'last seen together' theory. The factum of rape of the deceased was sought to be proved from the report on examination of vaginal smear, collected and said to confirm the presence of semen and sparmatoza indicating that the alleged victim had sexual intercourse before her death. Although, the accused-appellant was found to be potent but no stain of blood or semen was found on his dhodi and further no injury was found on the vagina/private part of the victim. It was under such circumstance that it was held that rape was not proved. The facts and circumstance in the present case are again not similar to the case under reference. The prosecutrix was forcefully taken to a secluded place by threatening her with a knife, forced to drink liquor and was subjected to rape. It is a settled proposition in law that injury is not always a precondition to prove the charge of rape. As already stated herein above, the prosecutrix was not subjected to brutal force which would have led to her sustaining injuries. Therefore, the absence of injuries by itself cannot be the ground to disbelieve her version when her narrative about the incident appears to be cogent, inspiring the court's confidence and corroborated by the version of other prosecution witnesses. Therefore, the case under reference does not render any assistance to the case of the appellant."

79. **J. Lalruatsanga** (*supra*) was a case of the prosecutrix not sustaining any injury in the gang-rape due to non-resistence arising from fear. The present case is one where non-injury to the private parts of the prosecutrix is the result of non-resistance to the act of ravishment because she was semiconscious on account of the alcohol that she was forced to have.

80. In the context of a case of gang-rape, where the prosecutrix did not sustain injuries to her private parts, the following remark of the Supreme Court in **Raju alias Umakant v. State of M.P., 2025 SCC OnLine SC 997** may be referred to with profit:

"28. Nothing much turns on the evidence of the Doctor, (PW-10) who performed the medical examination on the prosecutrix. Her evidence that no definite opinion could be given, and that no other injury other than the one on the lip of 'R' was present, does not mean that sexual assault was not committed on the prosecutrix 'R'. It is also well-settled that where the ocular evidence is clear, it will prevail over the medical evidence. [See Central Bureau of Investigation v. Mohd. Parvez Abdul Kayuum, (2019) 12 SCC 1 (para 65)]"

81. Here too is a case where the prosecutrix is consistent about the fact that she was ravished by multiple men. She was in a semiconscious state and may not be trusted with her identification of those offenders she knew not beforehand, but that does not mean that her account of suffering the gruesome crime is to be disbelieved altogether, merely because there was no injury to her private parts.

82. In the result, Criminal Appeal Nos.1594 of 2017, 1580 of 2017 and 1282 of 2017 succeed and are **allowed**. The appellants, Irfan son of Shahzade, Ritesh @ Shanu and Manvendra @ Kallu are hereby **acquitted**, granting them the benefit of doubt. They are in jail and shall be released from prison forthwith unless wanted in connection with any other case and subject to fulfilling the requirements under Section 437-A Cr.P.C. equivalent to Section 483 of

the Bharatiya Nagarik Suraksha Sanhita, 2023).

83. Criminal Appeal No.1897 of 2017 preferred by the appellant, Irfan @ Golu is hereby **dismissed** and his conviction and sentence by the Trial Court stand **affirmed**.

84. A copy of this judgment along with trial court record be sent to the Sessions Judge, Mahoba for information and necessary compliance.

(2025) 9 ILRA 135
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 12.09.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE RAJEEV SINGH, J.

Criminal Appeal No. 1612 of 2013

Mata Prasad Mishra ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Firoz Ahmad Khan, Rajendra Prasad Lodhi, Rudra Pratap Lal, Santosh Kumar Gupta

Counsel for the Respondent:
Govt. Advocate

Issue for Consideration

The appellant demanded money from his wife for ganja, she refused, leading to a quarrel. appellant killed her by pressing her mouth while sleeping. The trial resulted in the conviction of the appellant under section 302 IPC for the death of his wife.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Section 302-Challenge to-Conviction-testimony of child witness needs corroboration-Material contradiction between the testimony of the eye-witness(PW-2) and the Complainant(PW-1) and with the post-mortem report and inquest report, the prosecution failed to meet the required standard of proving the cases beyond doubt.

Held

The court held that the testimony of PW-2 was deemed unreliable and likely tutored due to material contradictions, such as claiming the beating lasted 10-15 minutes but failing to wake the deceased's own sons sleeping nearby-The post-mortem finding of food in the stomach also contradicted PW-2's claim that they slept hungry-The FIR was delayed by four days-The court noted the possibility of the case being lodged due to enmity over money between the PW1 and the appellant-A pillow recovered , PW2 did not testify that a pillow was used-The Investigating officer admitted that no evidence was found on the pillow to link to the crime-The deceased daughter testified that her father was not present at the house that night and that PW-2 was lying-The court's rationale was that the prosecution failed to prove its case beyond reasonable doubt.(Para 22 to 26) (E-6)

Case law Cited

Digamber Vaishnav & Anr. Vs State of Chhattisgarh;2019 (4) SCC 522-referred to.

List of Acts

Criminal Procedure Code, 1973, Indian Penal Code,1860.

List of Keywords

Conviction, testimony, child witness, corroboration, Material contradiction, eye-witness (PW-2), Complainant(PW-1), post-mortem report , inquest report, prosecution.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL-APPEAL No. –1612 of 2013
From the Judgment and Order dated 12.09.2025 of the High Court of Judicature at Allahabad.
Mata Prasad Mishra Vs. State Of U.P.

Appearances for Parties

Counsel for Appellant

Firoz Ahmad Khan, Rajendra Prasad Lodhi, Rudra Pratap Lal, Santosh Kumar Gupta
Counsel for Respondent
Govt. Advocate

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

1. Heard, Sri Rudra Pratap Lal,learned counsel for the appellant and learned AGA.

2. The instant Criminal Appeal under Section 374(2) of Criminal Procedure Code (hereinafter referred as Cr.P.C.) has been filed against the judgment and order dated 27.09.2013 passed in Session Trial No.19/2012; State versus Mata Prasad Mishra by the Special Judge, (E.C.) Act, Gonda arising out of Case Crime No.390/2011, under Section 302 of Indian Penal Code (hereinafter referred as I.P.C.), Police Station Dhanepur, District Gonda.

3. The prosecution case is that the sister of the complainant Raj Kumar Pandey, Shail Kumari was married about 25 years ago with Mata Prasad Mishra. His brother-in-law Mata Prasad Mishra always used to beat his sister but she did not speak anything. His sister has five children, two daughters and three sons. His brother-in-law always used to take ganja and never took responsibility of house and children. On 04.09.2011, his brother-in-law demanded money from his sister for ganja but she declined, on account of which there was quarrel between them and in the evening on that day, the food was not prepared. In the night of 4/5.9.11, while his sister was sleeping on cot alone and her children Jitendra, Shiv Nandini and Manoj were also sleeping near her, seeing the opportunity, his brother-in-law killed his sister by pressing her mouth. The complainant was out and when he came back then he came to know about it and, accordingly, the F.I.R. was lodged by him on 08.09.2011.

4. On the basis of Tehrir(Ex Ka-1) of the complainant, the F.I.R.(Ex.Ka-4) was recorded. Thereafter recovery memo(Ex Ka-2), carbon copy of the report (Ex. Ka-3), site plan of the place of incident(Ex.Ka-5), inquest report(Panchayatnama) (Ex.Ka-7), photograph of the dead body (Ex.Ka-8), Form No.13 (Ex.Ka-9), Letter of R.I. (Ex.Ka-10), Letter of C.M.O.(Ex.Ka-11), Sample Seal (Ex. Ka-12), copy of report No.25 prepared at 11:30 on 05.09.2011(Ex. Ka-13) and post mortem report (Ex. Ka-14) were prepared by the Investigating Officer during the investigation and placed on record. Thereafter, after recording the statement of the witnesses and collecting the material, charge sheet under Section 302 I.P.C.(Ex. Ka-6) was submitted in the court of C.J.M., Gonda. Considering the same, the cognizance was taken on the chargesheet and the accused/ appellant was summoned. On his appearance, the copies of the required documents in compliance of Section 207 Cr.P.C. were provided and finding it to be a case triable by the Sessions Court, it was committed to the Session by means of the order dated 10.01.2012 passed by Chief Judicial Magistrate, Gonda. The Session court framed charge against the appellant under Section 302 I.P.C., which was denied by the appellant and he prayed for trial.

5. During trial, in support of the charge, the complainant(brother of the deceased) Raj Kumar pandey as P.W.1, Manoj Kumar Pandey(son of the complainant) as P.W.2, Head Constable Nitya Nand Singh as P.W.3, Pramod Kumar Jha as P.W.5 and Dr. G.K. Sharma as P.W.6 and S.I. Ramayan Singh as P.W.6 were examined in evidence. Thereafter, the

statement of the accused-appellant was recorded under Section 313 Cr.P.C., in which he stated that the incident is wrong, false evidences have been recorded and fraudulent recovery has been shown and the case has been lodged on account of enmity. He also stated for giving the evidence. Shivangi Mishra, daughter of the deceased, was examined in defence as D.W.1.

6. Thereafter, after hearing Assistant Government Advocate(Criminal) and the counsel for the defense, the trial court convicted the appellant under Section 302 I.P.C. and after affording opportunity of hearing, sentenced him with rigourous life imprisonment with a fine of Rs.5000/- and in default of payment of fine, he would have to undergo one month additional simple imprisonment. Being aggrieved by the impugned judgment and order, the instant Criminal Appeal has been filed.

7. Learned counsel for the appellant submitted that the appellant was falsely and wrongly implicated in the case on account of enmity with his brother-in-law, in connection with the dispute of payment of money. He further submitted that the marriage of the appellant and deceased was solemnized prior to 25 years of the date of incident and there is no prior complaint from any corner. The conviction has been made only on the basis of evidence of P.W.1 and P.W.2, who are the complainant and his son, without considering the evidence of the defence witness and the material on record and dealing it appropriately. Thus, learned counsel for the appellant submitted that the conviction of the appellant is not sustainable in the eyes of law and liable to be set aside.

8. Per contra, learned AGA, vehemently opposed the submissions of learned counsel for the appellant. He submitted that the appellant has rightly been convicted, in accordance with law, considering the evidence of eye witness who appeared as P.W.2 and the material on record. There is no illegality or error in the impugned order, which may call for any interference.

9. We have considered the submissions of learned counsel for the parties and perused the records.

10. The F.I.R. was lodged by Raj Kumar Pandey, the brother of the deceased Shail Kumari on 08.09.2011 with the allegation that the husband of the deceased has killed her in the intervening night of 4/5.9.11, while she was sleeping on cot and at that time his two sons namely Jitendra and Shiv Nandini and son of the complainant, Manoj Kumar Pandey were also sleeping near her. It has been stated that the sister of the complainant has been killed by her husband, as in the evening of 4.9.11, he had demanded money from her for taking ganja but she refused to pay the same. Admittedly, the complainant was not present at the time of alleged incident. It has been stated that when he came back in the evening of 7.9.11, then he came to know about the incident and thereafter he lodged the F.I.R.

11. It is not in dispute that the deceased Shail Kumari had died in the intervening night of 4/5.9.2011. The son-in-law of Shail Kumari, namely, Awadhesh Kumar Tiwari had reported the matter to police on 05.9.11 at 11:30 in the concerned police station. It was stated in the said report that his mother-in-law Shail Kumari wife of Mata Prasad Mishra has suddenly died. When he reached on the spot, he saw that body of her mother-in-law was lying

on the door. He came to know that she had died suddenly. This report was recorded at Rapat No.25 at 11:30 on 05.09.2011 at Police Station Dhanepur, District Gonda, which has been marked as Ex.Ka(13). This report has been proved by S.I. Ramayan Singh, who appeared as P.W.6. It has further been stated by him that on receipt of the said information, he went to the spot and got the inquest of the dead body done. In the inquest i.e. Ex. Ka(7), the husband of the deceased Mata Prasad Mishra, i.e. the appellant is also a member. As per opinion of the members of the inquest report, the deceased had died suddenly but on account of doubt, the post mortem may be got done to remove the doubt. P.W.6 has proved the inquest report. He has also stated that at the time of inquest, the husband of the deceased was also present. During inquest, nobody had made any allegation against the husband of the deceased Mata Prasad Mishra. After inquest, the dead body was sent for post mortem.

12. The post mortem was done by Dr. G.K. Sharma, who appeared as P.W.6. He proved the report of post mortem. He stated that the age of the deceased was about 45 years. The upper rigor mortis is passing and lower present. The eyes were closed. The mouth was half open. No opinion was given in regard to the natural injuries. The red spots were present under the skin. The cavity and the mind was congested and corotina was also highly congested. The spinal cord was not opened. Three injuries were found. First was contused swelling of 12 cm x 8 cm over left side of her face, second was contusion of 10 cm x 10 cm over left shoulder backwards, and third contusion of 8 cm x 8 cm over right shoulder backwards. The cause of death was asphyxia as a result of antemortem smothering. The viscera was preserved. He also stated that the doctor, who was present with him, was in agreement with the opinion given in the post mortem report. In the cross examination, he stated that the deceased could have died on account of pressing of her mouth and nose. He also stated that such death was possible on account of pressing of mouth and nose by pillow. The time of death was within one and half day. The post mortem was conducted on 06.09.11 at 4:00 p.m. Admittedly, after post mortem the cremation of the deceased was done by the family members and the complainant was not present even at the time of cremation.

13. The complainant Raj Kumar Pandey appeared as P.W.1. He has stated that his sister Shail Kumari was married about 25 years ago with the appellant Mata Prasad Mishra. The house of his brother-in-law is at a distance of about 250-300 meter from his house. His brother-in-law always used to beat his sister, which she used to tell him. He further stated that his sister had 5 children, three sons and two daughters. His brother-in- law was in habbit of taking ganja. He did not take the responsibility of the children. His brother-in-law had demanded money from his sister on 04.9.11 for taking ganja and his sister had denied. On the said date, on account of quarrel between them, the food was not prepared. His sister was sleeping alone on one cot and near her three children were sleeping Shiv Nandini, Jitendra and Manoj(son of the complainant). His brother-in-law had killed his sister by pressing her mouth, which was told to him by his son Manoj. His son was staying in the house of his sister on the date of her death. When he came back, then his son informed that bua has been killed, thereafter, he gave a written tehrir at the police station, after getting it written by Devta Prasad pandey.

He also stated that he had not got the report written by dictating but he had told the incident, on which the report was written. Thereafter, after signature, he had submitted it at the police station. He proved the written report, which is Ex. Ka-1. He also proved his signatures. He further stated that after lodging of the F.I.R., the police had gone at the place of incident alongwith him and he had shown the place, where his sister had died. After arrest of his brother-in-law, the pillow was recovered before him, which is EX. Ka-2, which was also signed by him. From the evidence of P.W.1, it is apparent that he was not present either on the date of incident or thereafter in the cremation of the deceased and the F.I.R. has been lodged by him on the information given by his son Manoj Kumar Pandey, who appeared as P.W.2. The report was written by Devta Prasad on the basis of incident told by the complainant and not on his dictation. Thus the version in the F.I.R. is of the scriber of F.I.R. and not of the complainant, whose evidence in regard to incident is also hearsay. In regard to information received by the complainant, he has stated in the tehrir, on the basis of which, F.I.R. has been lodged, that when he came back then after talking to the children, he came to know about the incident, whereas in the evidence before the trial court, he has stated that his son Manoj Kumar Pandey was at the house of his deceased sister and when he came back, then he told that his bua has been killed. Thus, there is contradiction in the testimonyof P.W.1 Raj Kumar Pandey in regard to the information received by him.

14. Manoj Kumar Pandey(P.W.2), at time of recording of his evidence, was aged about 10-11 years. He stated that Mata Prasad Mishra is his phoofa and the name of his bua was Shail Kumari. He further stated that he had gone to the house of his bua in the evening. She told that quarrel has taken place and asked him to stay. When she was telling it, his phoofa had come and threatened him. Food was not prepared. They slept hungry in the night. After hearing noise of quarrel, he woke up. He saw that his phoofa was beating to his bua. He had climbed on her chest and pressing her mouth with balit(may be by palm). He told him that if he would tell it to anybody, then he will also face the same consequence. He further stated that after the incident, he stayed back there and in the morning he came back to his house and told about the incident to his grand mother. His father was out. When he came back then he told to him. He had come back on 07.9.11. The tehrir was given on 08.9.11. On asking by the Darogaji, he had told him. In the cross examination, he stated that he had gone to his bua's house at 4:00 in the evening. The quarrel was going on between his bua and phoofa since prior to his going. Thereafter he stated that no quarrel had taken place before him. Thus there is contradiction in his evidence regarding quarrel between the deceased and his phoofa. However, it is apparent that it had not taken place at least before him. Six persons reside in the house of his bua, Surendra, Jitendra, Usha, Badkanne and Chotkanne. When he reached there Badkanne and Chotkanne were not there. The remaining were there. One was inside his house. Chotkanne and Badkanne had gone to Surat. The food was not made at the house of bua on that date but he had not come to his house to take the food and he went to his house on the next day. He further stated that he used to come to the court alongwith his father. He further stated that his statement was recorded by the Darogaji after 10-15 days. He had gone to the police station alone for recording his

statement. Father had not gone with him. The police station is about 5 kms away from his house. It is very strange that a child of 10-11 years, who used to come to court with his father, would had gone to the police station for recording of his statement on his own after lodging of the F.I.R., whereas the police station was about 5 kms. away. He has also stated in his cross examination that two sons of his bua, namely, Surendra and Jitendra were also sleeping together. He further stated that when phoofa was beating to his bua, their sons had not seen him. His phoofa had beaten to his bua for 10-15 minutes. His bua had cried but she had not wept. His phoofa was sleeping adjacent to him. All of them had slept at 7:00. He does not know as to what was the time when the marpeet had taken place. The marpeet had taken place in the mid night. It is very strange that as per evidence of P.W.2 marpeet had taken place for 10-15 minutes and the deceased was crying on account of which P.W.2 had awaken but other children of the deceased, who were also sleeping near them had not awaken. He has further stated that after death of his bua, they had not called anybody. He remained awake and both the sons kept on sleeping. He went to his house in the morning and told to his grandmother. In the house, his mother, elder brother and his younger brother were also there. On his information, they went to see his bua but he had not gone at that time. His father had gone to Balrampur to his bua's house, who came back on 7.9.11. He had gone to see his bua, who was residing in Balrampur. He further stated that on 4/5.9.11, his bua of Balrampur and his father had not gone to see the deceased. His grand mother had not lodged any report against his bua. The evidence of P.W.2 shows that either he was not present on the spot on the date of incident or he is lying on the instigation of somebody,may be his father, because it is very improbable that the deceased was being beaten for about 10-15 minutes and none of his sons, who were sleeping near her, had awaken.

15. Admittedly, no action was taken or report was lodged by the grand mother of P.W.2 i.e. the mother of the deceased. The report of death given by the son-in-law of the deceased also does not indicate any involvement of the appellant. It only indicates sudden death. In the opinion of the members of the inquest also, the death of the deceased was sudden. They had not indicated even a suspicion in the death of the deceased. The mother of the deceased and the complainant and the son-in-law have also not been produced in evidence. The Investigating Officer, Sri Pramod Kumar Jha, who appeared as P.W.4, has also stated in his evidence that statement of mother-in-law was not recorded by him. He has also admitted that the information of the death of the deceased was given by the son-in-law at the police station stating that his mother-in-law had died suddenly.

16. It was alleged in the F.I.R. that brother-in-law of the complainant Mata Prasad Mishra, has killed his sister by pressing her mouth. P.W.2, who is alleged to be an eye witness, has stated that when he woke up in the night after hearing the cry, then he saw that his phoofa was beating to his bua. He was climbing on her chest and pressing her mouth with balit(may be by palm). However, he has not stated that the appellant was pressing the mouth of the deceased by pillow, whereas recovery of pillow has been shown on the pointing out of the appellant as Ex. Ka-2 from the tree of tamarind from the back of the hut, which was on the eastern side, whereas in the Site Plan contained as Ex.

Ka-5, no tree of tamarind has been shown on the eastern side of the hut. The grove has been shown, which is on the south-east of the hut near the pond of Gram Samaj. This recovery has also been made in presence of the complainant i.e. Raj Kumar Pandey P.W.1, whereas he or P.W.2 have not stated in their evidence that the deceased was killed by pressing her mouth by pillow. P.W.4 in his evidence proved the pillow, which was recovered and present before him at the time of evidence. He has specifically stated that no evidence was found on the pillow, which may indicate that it was used in the incident. On pillow being shown to the witness, he stated that neither any blood, cough etc was found on it, nor any kind of mud etc. was found. Thus, on the one hand, it appears that by showing the recovery of pillow, it has been tried to show that the deceased was killed by pillow but no evidence of any kind on pillow, alleged to have been used in the incident, could be found or proved.

17. There is also material contradiction in the evidence of P.W.1 and P.W.2. P.W.1 has stated in his evidence that alongwith his sister Shivnandini, Surendra and Jitendra were sleeping, whereas P.W.2 who is alleged to be an eye witness has stated that alongwith her bua, her two sons namely Surendra and Jitendra were sleeping and he was sleeping with Surendra and Jitendra. P.W.4, the Investigating Officer has stated that he had made the investigation as told by the complainant on his saying. He has also stated that he had recorded the evidence of the complainant Sri Raj Kumar Pandey and the eye witness Km. Shivangi and inspected the site on pointing out of the complainant and recorded the evidence of other witnesses and also prepared the site plan,which is Paper No.5/2, whereas Km. Shivangi has not been shown to be present at the time of incident by P.W.1, who has been shown an eye witness by the investigating officer.

18. Km. Shivangi Mishra has appeared as D.W.1 as a defence witness. She has stated that relation between her father and mother were good. On 04.09.2011, his Aaji had become ill and his father had gone for his treatment. Her father and Aaji lives in the village. Her mother used to live in the house situated out of village. We also reside with the mother. She and her younger brother Jitendra were sleeping in the house of her grand mother on 04.09.2011. The father had not come in the night. In the morning of 05.09.2011, at about 9-10 a.m., we came to know that the mother is lying dead on the floor. She further stated that her father and Aaji had come at about 11:00 a.m. after hearing about the incident. She further stated that quarrel was going on between the maternal uncle and her father for quite a long time in connection with exchange of money. Mother used to tell that your maternal uncle had not come to home since 7-8 years and he keeps enmity with your father. She has further stated that her maternal uncle had never come to her house in her memory. She has also stated that Manoj, the son of maternal uncle, has wrongly stated that he was sleeping with her mother. Km. Shivangi Mishra was aged about 14 years at the time of her evidence. In the cross examination, nothing could be extracted which may create any doubt about her testimony.

19. P.W.4 has admitted in his evidence that he had not tried to enquire as to whether the complainant was at home or not. He has also stated that reference of report of son-in-law has not been made in

the charge sheet, therefore, it is apparent that the Investigating Officer had not considered the report submitted by the son-in-law of the deceased at the police station, in which he had stated that his mother-in-law had died suddenly.

20. P.W.2 Manoj Kumar Pandey has stated that in the evening of 04.09.2011, the food was not prepared and all of them had slept without food, whereas the post mortem report indicates that about 30 ml liquid congested has been found in the stomach, pancreas were also congested. Thus, the post mortem report also does not support the evidence of P.W.2.

21. S.I. Ramayan Singh, who appeared as P.W.6 has stated that while he was posted as Sub Inspector in Police Station Thanepur, District Gonda on 05.09.2011, on the written information of Awadhesh Kumar Tiwari, he had reached in the village Mahesh Bhari at 12:15, where the dead body of the deceased Smt. Shail Kumari, wife of Mata Prasad Mishra was present. He had prepared the inquest report and proved the same, which is Ex. Ka-7. He has stated in his cross examination that on the information given by Awadhesh Kumar Tiwari, he had conducted the inquest of the dead body. In the said information, sudden death and that the body is lying on the door, was stated. There was no allegation against anybody in the report in regard to the death of the deceased. The members of the inquest report had also stated about sudden death. At the time of inquest, the husband of the deceased was also present. It has also been stated that during preparation of the inquest report also, nobody had levelled any allegation against the appellant, which is also apparent from the inquest report.

22. The instant prosecution is based mainly on the evidence of P.W.2, who is said to be an eye witness, because the F.I.R. has also been lodged on the information given by him to his father. Thus, he can be said to be 'star witness' or 'sterling witness' in the matter, on the testimony of whom, the fate of the prosecution was dependent. He was aged about 10-11 years at the time of evidence and a child of 9-10 years old at the time of incident. The testimony of such star witness, who was a minor child of 9-10 years also at the time of incident should be such that going through the same, the court can come to the conclusion that the accused is liable to be convicted and there should be no inconsistency in his testimony in itself or with the other witnesses, failing which his testimony would fail and the conviction cannot be based on the same. The evidence of such witness is required to be evaluated carefully.

23. The Hon'ble Supreme Court in the case of ***Rai Sandeep Alias Deeput versus State (NCT of Delhi); 2012) 8 SCC 21*** has held that the "Sterling Witnesss" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. The relevant paragraph 22 is extracted hereinbelow:-

"In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what

would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

24. The Hon'ble Supreme Court, in the case of ***Digamber Vaishnav & Anr. versus State of Chhattisgarh; 2019 (4) SCC 522,*** has held that the evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring, therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. The relevant paragraphs 22 and 23 are extracted hereinbelow:-

"22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law.

23.In Alagupandi alias Alagupandian v. State of Tamil Nadu; (2012) 10 SCC 451, this Court has emphasized the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. It was held that:

"36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only

precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

25. dverting to the facts of the case, it is apparent that there is material contradiction in the evidence of P.W.1 and P.W.2 and looking to the evidence of P.W.2, it is apparent that either he was not present on the spot at the time of alleged incident or he is lying being tutored and his testimony does not inspire confidence. The F.I.R. has been lodged by the brother of the deceased, who has some enmity with his brother-in-law in connection with the exchange of certain money, which could not be ruled out on account of the fact that only he has lodged the F.I.R. and appeared in evidence alongwith his son and none of the family members of the deceased including her mother have even levelled any allegation against the appellant, what to say of lodging the F.I.R. or appearing in evidence. The complainant is also a witness to the recovery of pillow, whereas neither the F.I.R. nor the evidence of P.W.1 and P.W.2 discloses about use of pillow for pressing the mouth of the deceased and no evidence of use of same have been found on it. Though the complainant was not present at the time of incident but as admitted by the Investigating Officer, who appeared as P.W.4, the investigation was conducted and place of incident was inspected and the site plan was prepared on his pointing out but without considering it all the trial court has passed the impugned judgment and order. Thus, this Court is of the view that in the instant matter, neither investigation has been conducted appropriately nor the learned trial court has passed the impugned judgement of conviction and order of sentence after considering and dealing with the evidence and material on record appropriately, whereas as discussed above, the prosecution has failed to prove his case beyond doubt. The learned trial court has also failed to consider the evidence of D.W.1, who is daughter of the deceased, who has stated that the appellant was not present at the place of incident in the night of the incident and the complainant had some quarrel with the appellant for some time and in her memory he had not come to their house and P.W.2 was not at the place of incident in the said night and nothing could be extracted from her in cross-examination, which may create any doubt about her testimony. Thus, this Court is of the view that the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside.

26. The appeal is, accordingly, **allowed**. The impugned judgment and order dated 27.09.2013 passed in Session Trial No.19/2012; State versus Mata Prasad Mishra by the Special Judge, (E.C.) Act, Gonda arising out of Case Crime No.390/2011, under Section 302 of Indian Penal Code (hereinafter referred as I.P.C.), Police Station Dhanepur, District Gonda is hereby set aside. The appellant is acquitted.

(2025) 9 ILRA 145
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.09.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Appeal No. 1739 of 1983

Govind & Ors. ...Appellants
Versus
State ...Respondent

Counsel for the Appellants:
Anup Kumar Upadhyay, Priyansh, Pt. Mohan Chand

Counsel for the Respondent:
A.G.A.

Issue for Consideration

The appeal challenges the trial court's conviction of the accused persons, particularly the surviving appellant for charges of murder.
The case arose out of an incident where the deceased and his brother and an injured witness were attacked while taking a buffalo cart loaded with sugarcane to a factory.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 147, 148, 302/149, 323/149-Re-appreciation of Evidence-the court undertook thorough re-appreciation of the evidence on record, including ocular testimony and medical evidence-material discrepancy between eyewitness accounts and medical evidence vitiates the Prosecution case, engendering reasonable doubt warranting acquittal-appeal allowed.

Held

The court ruled that in murder prosecution u/s 302/149 IPC, ocular evidence demands independent corroboration from medical, circumstantial, or forensic evidence-uncorroborated or inherently improbable testimony cannot sustain conviction-Irreconcilable ocular-medical discrepancies (e.g. claimed 6.30 A.M. post-meal death vs postmortem empty stomach implying pre-dawn) vitiate the prosecution, warranting acquittal as per Moti Vs. State of U.P. judgment.(Para 41 to 53) (E-6)

Case law Cited

Moti Vs State of U.P. AIR, 2003 SC (1897)-referred to.

List of Acts

Criminal Procedure Code, 1973, Indian Penal Code,1860

List of Keywords

circumstantial, or forensic evidence, ocular evidence, Re-appreciation of evidence, sugarcane, acquittal.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 1739 of 1983
From the Judgment and Order dated 11.09.2025 of the High Court of Judicature at Allahabad.
Govind & Ors Vs. State

Appearances for Parties

Counsel for Appellant(s)
Anup Kumar Upadhyay, Priyansh Pt. Mohan Chand
Counsel for Respondent(s)
A.G.A

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard Sri Priyansh, learned Amicus Curiae for the appellant Karua and Sri Amit Sinha, learned A.G.A. for the State-respondent.

2. Instant Criminal Appeal has been preferred against judgment and order dated 26.07.1983 passed by Leaned Additional Session Judge Etah in S.T. 215 of 1982, arising out of Case Crime No.238 of 1980,

under Sections 147,148, 302/149, 323/149 IPC, Police Station Sahawar, Kasganj, (then District Eath). Learned trial court, in said trial convicted the appellants Govind, Chhadami and Ram Dayal for charge under Section 148 IPC and sentenced them to two years rigorous imprisonment. Accused Om Prakash and Karua were convicted of charge under section 147 IPC and sentenced to one year rigorous imprisonment. All the accused namely Govind, Chhadami, Om Prakash, Karua and Ram Dayal were further held guilty for charge under Section 323/149 IPC and sentenced to one year rigorous imprisonment. All the accused persons were further held guilty of main charge under Section 302/149 IPC and sentenced to imprisonment for life. One accused Ran Singh had been acquitted of all charges for want of evidence.

3. It appears that during the pendency of present appeal, appellants Govind, Chhadami, Om Prakash and Ram Dayal died during the pendency of appeal and this appeal qua them was directed to be abated by order of this Court passed from time to time on order sheet and present appeal has been heard in respect of surviving appellant accused Karua only.

4. The factual matrix of the case as appearing from the material on record is that the informant Het Ram son of Chokhey Lodh lodged an FIR on the basis of written report at P.S. concerned on 02.12.1980 at 09:05 AM. with allegation that on that day, at around 06:30 AM the informant and his sons Budh Singh and Liladhar were on way to Nagariya Sugar Factory and sugarcane was loaded in the buffalo cart. His son Budh Singh was sitting on sugarcane and his other son Liladhar was driving the cart. The informant, the witnesses Basdev and Pusey were following the vehicle on foot. As soon as they reached near the Phooti Ghata Pulia, situated after some distance from Gangpur, his co-villagers Govind, Chhadami, Ram Dayal, Om Prakash and Karua emerged from western-side *gunders (Shrubs)* Ram Dayal, Govind and Chhadami were armed with country made pistols, Karua and Om Prakash were wielding lathis; Ram Dayal, Govind and Chhadami asked Liladhar to stop the vehicle and challenged him. Liladhar stopped the vehicle, Om Prakash assaulted Liladhar by *lathi* (club) and he fell down on the earth. Thereafter, Govind, Chhadami, Ram Dayal and Karua climbed the buffalo-cart and brought Budh Singh down. Govind, Chhadami and Ram Dayal opened fired at Budh Singh by their respective country made pistols. Accused Karua had assaulted Budh Singh by Lathi on climbing the buffalo cart. Budh Singh died on the spot having hit by fire arms. These people are assisted by Ran Singh Ahir, R/o Meerapurwa and Baboo Lodh R/o Chak, P.S. Kasganj.

5. The written report Ext. Ka-1 was scribed by one Natthu Ram, a co-villager. Constable Moharir Ramesh Singh had drawn chick FIR Ext. Ka-4 on the basis of said written report and registered a case against five named accused persons, while GD Entry No.16 time 09:05 hours dated 02.12.1980. The extracts of said GD Entry are proved on record as Ext. Ka-5. The inquest was conducted on dead body of the deceased Budh Singh on 02.12.1980 between 10:00 am to 11:30 am at the place of incident by S.I. Hori Lal in presence of Panch Witnesses. In inquest report Ext. Ka-6 nine injuries are described on the person of the deceased. The dead body was carried to District Headquarter for postmortem by Constable Suraj Singh and Virendra Singh

alongwith eight number of papers including, photo nash, chalan nash, report of CMO. The postmortem examination on the person of the deceased was conducted by the Dr. N.K. Agarwal on 03.12.1980 at around 03:30 PM at Etah, in which as many as six injuries were detected on the person of the decreased, out of which three injuries, in the opinion of doctor were inflicted by fire arms and three injuries were lacerated wound caused by some hard and blunt object.

6. In the opinion of the author of postmortem report, the cause of death was due to shock and hemorrhage as a result of antemortem injuries No.5 and 6. The investigating officer recorded statements of the informant and other witnesses on commencement of investigation. The medico legal examination of injuries of the injured Liladhar was conducted by doctor S.D. Mishra (PW-3) on 02.12.1980 at around 04:05 PM, and wherein five injuries were detected on his person and one injury was shown as complaint of pain in upper part of head.

7. S.I. P.C.Chaturvedi (PW-6) recorded statement of the informant on the date of lodging of FIR and conducted spot inspection of the place where dead body was lying. He directed S.I. Hori Lal Verma to carryout inquest on the dead body which was conducted in his presence.

8. The Investigating Officer also prepared site plan of place of occurrence on pointing out of the informant. He collected blood stained and plain earth from the spot and prepared an inventory, and he also took into his possession two empty cartridges which he got sealed and prepared its inventory. He took into his possession the buffalo-cart loaded with sugar-cane which was lying on the spot and entrusted it to the custody of Basdev, the uncle of the deceased. The named accused persons, after the lodging FIR became non traceable, as they absconded to evade arrest. The Investigating Officer effected proceedings under Section 82/83 Cr.P.C. against accused persons after getting the process issued from the court. This fact emerged from statement of witnesses during investigation that a conspiracy was hatched between named accused persons and one Ran Singh, on the eve of the day of incident dated 01.12.1980 in the chaupal of accused Ram Dayal, Govind, Chhadami, Om Prakash and Karua were present and they made a plan to eliminate Budh Singh.

9. The Investigating Officer submitted chargesheet against five accused persons after concluding the investigation namely Govind, Chhadami, Ram Dayal, Karua and Ran Singh for said charges, showing them as “absconded”. Subsequently, the attendance of accused persons was procured and accused Om Prakash and Karua were enlarged on bail and subsequently other accused were also enlarged on bail during trial. The case was committed to the court of session by learned CJM. On 11.05.1982 learned trial court framed charges against accused Om Prakash, Karua under Section 147, 323/149, 302/149 IPC. Learned trial court framed charges under Section 148, 323/149, 302/149 IPC against accused Govind and Chhadami on 25.06.1982. The accused Ram Dayal was charged with Section 148, 323/149, 302/149 IPC on 01.02.1982 as he was subsequently summoned under Section 319 Cr.P.C.. His case was initially separated due to his absence and he was not committed to court of session alongwith co-accused. The accused persons were put on trial.

10. In prosecution evidence, PW-1 Hethram the informant, PW-2 Liladhar injured witness, PW-3 Dr. S.D. Misra, the author of injury report of Liladhar, PW-5 Dr. N.K. Agarwal author of postmortem report of deceased Budh Singh, PW-6 S.I., P.C. Chaturvedi, the Investigating Officer were examined in support of prosecution case.

11. So far as exhibits are concerned PW-1 Hethram, the author of written report proved as Ext. Ka-1. PW-3 Dr. S.D. Mishra, proved injury report of Liladhar as Ext. Ka-2, PW-5 Dr. N.K. Agarwal proved postmortem report as Ext. Ka-3, PW-6 S.I. P.C. Chaturvedi, the Investigating Officer proved Chick FIR authored by Constable Ramesh Chandra as Ka-4 and extracts of G.D. entries of registration of case as Ext. Ka-5, inquest report as Ext. Ka-6., Photonash, chalan nash and report RI as Ext. Ka-7 to 9, site plan as Ext. Ka-10. Recovery memo of blood stained and plain earth and cartridges as Ext. Ka-11, recovery memo and supurtiginama of Buffalo-cart Ext. Ka-12 and chargesheet as Ext. Ka-13. He also proved arrest warrant, process under Section 82 and 83 issued by the Court against accused persons who have absconded after the incident as Ext. Ka-14 to Ka-53.

11. Out of six witnesses examined by prosecution to prove its case PW-1 Hethram, PW-2 Liladhar are produced as eye witness and other witnesses are medical and formal witnesses.

12. The prosecution has examined six witnesses to prove its case. P.W.-1 Het Ram is the *de facto* complainant. He has stated that Liladhar is his son and Budh Singh deceased was also his son. Pusey was of his village who has now Ran away from the village due to fear of the accused. Accused Govind, and Chhadami are of his village and Om Prakash, Karua and Ram Dayal are intimate and friends of Govind and Chhadami. Babu is the brother-in-law of Govind and Chhadami. He, further, stated his son Budh Singh was a *Pahalwan (wrestler)* and a healthy strong man. The field of Govind and Chhadami is adjoining to the place where his (P.W.1)'s cattle would be tied, Govind and Chhadami claimed this place and asked PW-1 to remove his cattle from that place, but Het Ram and his sons insisted that it was their land. Govind and Chhadami could not occupy that piece of land due to Budh Singh. There was altercation earlier in this connection between his son Budh Singh and Govind and Chhadami. A day prior to the occurrence, Liladhar told him that accused Govind, Chhadami, Ram Dayal, Om Prakash, Karua, Ran Singh and Babu were conspiring in the Chaupal of Ram Dayal, to commit the murder of Budh Singh. He did not pay any heed to this things. On the day of occurrence, he was going to Nagariya mill with his sugar cane loaded in a bullock-cart. The cart was being driven by Liladhar and Budh Singh was sitting over the cane in the cart. He (PW-1) along with Basdev and Pusey were following the cart on the foot. When the cart reached at Phooti Ghata Ki Puliya at about 06:30 AM, accused Govind, Chhadami, Ram Dayal, Om Praskash and Karua came out from the “Jhund” of Goondar. Govind, Chhadami and Ram Dayal had Tamanchas, Karua and Om Prakash had lathies. Govind and Chhadami came ahead and asked Liladhar and Budh Singh to stop the cart. They abused and said *"Aaj Nikal Paogey Tab Malum Paregi.* "Liladhar stopped the bullock cart. Govind, Chhadami and Karua went over the cart. Karua gave lathi blow to Budh Singh and

Om Prakash gave lathi blow to Liladhar. Budh Singh was dragged down from the cart and then Chhadami, Govind and Ram Dayal fired at him with intention to kill him. Budh Singh died on the spot. He, Basdev and Pusey raised alarm and the accused ran away. Subsequently, the persons of the neighbouring places came there. He got his report written by Natthu of Gangpur. It is Ext. Ka-1. It was read over to him and then he put his thumb-impression over it.

13. He took the report to the Police Station and handed over it there. In his cross-examination, he has stated that Karua and Om Prakash are residents of other villages. Ran Singh is also resident of Karua's village. Govind and Chhadami are residents of his village.

14. He does not know the number of plot where he ties his cattle. He never obtained any sale-deed of the said land in his favour. He added that *"Jamindar Nay Basaya Tha."* He, further, stated *"Chakbandi Sey Pahiley Muljiman Govind, Chhadami Wa Karua, Govind Wa Chhadami Kay Hissey Mian Le Gaya…… Pani Us Kuan Rahat Sey Ab Bhi Hamarey Kheton Main Chalta Hai."* He stated that Govind and Chhadami wanted to occupy forcibly the place where his cattle are tied down and he does not relish it. There used to be be altercation between his sons and accused Govind and Chhadami, but he never lodged my report. He had stated before the I.O. that a day prior to the occurrence, there was conspiracy at the 'Chaupal' of Ram Dayal. He was confronted with his statement under Section 161 Cr.P.C. On this point where he has stated that *"Merey Lerkey Liladhar Ney Hame Kal Bataya Tha Ki Yahe Sab Log Ram Dayal Ke Chabutree Par Baith Kar Salah Kar Rahey They Ki Budh Singh Ko Pahele Marado.* "This statement has been recorded on 12.12.1980. On the day of occurrence, the Parchi of the Sugar Mill was with Liladhar. The said 'Parchi' was not given and shown to the S.I. because the cart was loaded with sugar-cane. Budh Singh had taken some Nashta (breakfast) before starting for the mill. He had taken 1/2-1. 'Parantha' about 10 minutes prior to the occurrence. Hundred-two hundred persons had assembled on the spot and Siya Ram, Chowkidar of Gangpur had also come there. He did not take the Chaukidar along with him for lodging the report. He had no talks with chaukidar and persons assembled on the spot. He had gone to the Police Station alone. He did not talk to Liladhar before going to the Police Station. When the cart was halted, Om Prakash gave lathi blow to Liladhar first and then the accused climbed on the cart. He stated *"Govind Aur Chhadami, Ram Dayal Ne Budh Singh Par Kharey Hokar Fire Kiye Thay Jo intino Ne Fire Kiye wah Tino kay Fire Budh Singh kay lagey."* . It is wrong to suggest that he was not present on the spot. It is also wrong that this occurrence took place in the dark and the accused did not commit this murder. Where the cart halted Om Prakash gave lathi blow to Liladhar and then these accused went over the cart.

15. PW-2 Liladhar is son of the complainant, and brother of deceased. He was stated to be on the cart alongwith Budh Singh. He has stated that a day prior to the occurrence he was returning from the field. When he reached near the 'Chaupal' of Ram Dayal accused, he saw Ram Dayal, Govind, Chhadami, Om Prakash and Karua sitting there. They were planning to kill Budh Singh. They were saying *"Budh Singh Ko Mar Do, Yahi Hi Tagra Padata*

Hai.". He stated *"Ran Singh Wa Babu Us Chaupal Par Us Samay Nahin Thay."*

16. Regarding the incident on the date of occurrence, he stated that he was driving the bullock-cart loaded with sugar-cane. Budh Singh was sitting over it. Het Ram, Basdev and Pusey Ram were following the bullock-cart on foot. It was about 06:30 am, when the cart reached near the pullia of Phooti Ghata, accused Om Prakash, Karua, Govind, Chhadami, and Ram Dayal came from the western Goonder. They asked him to stop the cart and said *"Aaj Malum Parh Jayega Ki Aaj Nikal Paogey".* He stopped the cart. Govind, Chhadami and Karua climbed over the bullock-cart. Om Prakash gave him a lathi blow and he fell down. Karua gave two -three lathi blows to Budh Singh and brought him down and then Govind, Chhadami and Ram Dayal fired at Budh Singh who died on the spot. All the accused ran away. In his cross examination he stated that he had not become unconscious after receiving the injuries. He stated that *"Khara Ho Gaya Tha. Kharey Honey Ke Bad Phir Ek Aur Lathi, Om Prakash Nay Mari Thi."* The three accused fired at Budh Singh and the shots of all the three persons hit him. He had stated before the I.O. that he fell down first after receiving the lathi blow. He had also stated that Karua had given 2-3 lathi blows to Budh Singh. He cannot tell the reason as to why the Investigating Officer has not written these things in his statement. 100-200 persons had reached there hearing the alarm. The S.I. came on the spot at about 12:00 at noon. He remained there till the arrival of the S.I.. He did not talk to the persons assembled there about the occurrence. His clothes were blood stained. The S.I. had told him that he may wash his clothes. The blood had fallen on the spot at two places. He had the Parchi of Sugar-cane in his possession. He has shown it to the S.I. who had returned it. The dead-body was taken from that place at about 01:00 PM and the S.I. had also gone in Jeep. When he reached with the dead body at the Police Station Etah, the S.I. had already reached there. His father had not stayed near the sugar-cane, but had gone with the dead-body. The S.I. had given 'Parchi' for hospital on the spot. The S.I. recorded his statement after her returned from the Hospital. It is wrong to state that he was not driving the bullock-cart on the spot. It is wrong that the occurrence did not take place in the manner stated by him. He had stated about the conspiracy for murder having been made a day prior to the occurrence. Nobody else except him saw and heard the accused hatching this conspiracy. He had narrated about this conspiracy to his father after the occurrence.

17. PW-3 is Dr. S.D. Mishra. He testified that on 02.12.1980 he was medical officer Sahawar. On that day at 4-5 PM, he examined the injuries of Liladhar son of Heth Ram and noted the following injuries in the injury report:-

1. Contusion 9 cm. x 3 cm. obliquely on the back of left side of chest caused by blunt weapon.

2. Contusion 3 cm. x 2 cm. on back of right side of chest caused by blunt weapon.

3. Contusion 8 cm. x 3 cm. at the vertibral column caused by blunt weapon.

4. Contusion 6 cm. x 11 cm. At top of right shoulder caused by blunt weapon.

5. Contused traumatic swelling 10 cm. X 3 cm. at the front and middle on the left thigh caused by blunt weapon, and

6. complaint of pain in the upper part of the head.

18. All the injuries were simple and could be caused by some blunt weapon, like lathi- danda. They were about ½ day old and could possibly be caused on 02.12.1980 at 06:30 AM. He has proved the injury report as Ext. Ka-2. In his cross-examination, he has stated that these injuries cannot be self-inflicted. But, if a person has endurance to bear such pain then these injuries can be manufactured. It is wrong to suggest that he has wrongly noted down these injuries under the pressure of the police. He has stated *" In Choton Main Se Kabhi Kabhi Khoon Nahi Nikalta, Lalima 24 Ghante tak Rahetee Hai, uskey Bad Lalima Ka Rang Badalna Shuru Ho Jata Hai."*

19. PW-4 in Constable G.P. Virendra Singh. He has given his statement on affidavit. He is a formal witness on 02.12.1980, he was posted at Shahawar and on that date at about 11:30 pm. Sri Hori Lal Verma S.I. handed over the sealed dead-body of Budh Singh to him for postmortem alongwith all connected papers including Panchayat nama etc. He, alongwith the other constable Surat Singh brought the sealed dead-body to Etah and on 03.12.1980 presented it before the doctor alongwith the connected papers. The sealed dead-body remained intact till it was in his possession.

20. P.W.-5 I Dr. N.K. Agarwal on 03.12.1980 he was Medical Officer District Jail, Etah on that date, he conducted the postmortem of the dead-body of Budh Singh. He found following ante-mortem injuries on the dead body :-

1. Lacerated would 3 cm x 1 cam x scalp deep or on middle of head 15 cm over bridge of nose.

2. Lacerated wound 12 cm x 0.5 cm on middle of fore-head 7 cam above middle of nose.

3. Lacerated would 1 cm x 0.5 cm x muscle deep on front and middle of chin.

4. Multiple fire-arm wounds of entry in an area 4 cm x 4 cm each, ¼ cm x ¼ cm x muscle deep on left side front of chest just below mid of left clavicle.

5. Fire arm would of entry 1.5 cm x 1.5. cm x through on left side front of chest 6 cm away and below left nipple in the position of 7 O'clock. No blackening, direction transversely right to left.

6. Fire Arm wound of exit, 15 cm x 5 cm on left side of chest 8 cm below left nipple at 4 O'clock position.

21. He also conducted the internal examination of the dead-body and the result in detail is mentioned in his post-mortem Ext. Ka-3. In his opinion the cause of death was due to shock and haemorrhage as a result of ante-mortem injuries Nos. 5 and 6. Haematoma was present under injury No.1 and 2. The death had taken place about 1-1/4 day back. The ante-mortem injuries could be inflicted on 02.12.1980 at about 6:30 am. These injuries were sufficient to cause death in ordinary course. In his cross-examination he has stated that the fire arm injuries could be possible by three shots. The injuries of blunt object could be caused by three

blows. The stomach was empty, which demonstrates that the deceased had taken food 5-6 hours prior to his death. 15 pellets were recovered from wall under injury No.4 and 14 pellets recovered from pleural cavity. He has stated that left Vth rib was fractured anteriorly.

22. PW-6 is S.O. P.C. Chaturvedi the Investigating Officer. In December, 1980, he was posted as S.O.. Sahawar, District Etah. He has stated that on 02.12.1980 this case was registered in his presence at his police station at 09:05 am. Het Ram had brought his written report Ext. Ka-1 and on its basis constable Ramesh Chandra prepared the chick FIR which he has also signed. It is Ext. Ka-4. The same constable clerk made its entry on GD Report No.16 of the same date and its true copy is Ext. Ka-5.

23. He investigated this case. He recorded the statement of Het Ram at the police station, the same day. He reached the spot. The same day he recorded the statements of Basdev and Pusey etc. S.I. Horilal Verma prepared the panchayat nama of the dead-body, challan-lash and report for post-mortem etc. under his direction in his presence. They are Exts. Ka-6 to Ka-9. Panchayat nama has been signed by him also. The dead-body was sealed and handed over to constable Surat Singh and Virendra Singh alongwith necessary papers for taking it to Eath for post-mortem. On the pointing out of the complainant he prepared site-plan which is Ext. Ka-10. Place marked as 'A" is the place where blood was found and at place "B" he found two Khokha cartridges. He took the blood stained and plain earth in possession and sealed them separately. He sealed the two Khokha cartridges also and prepared their recovery memos. It is Ext. Ka-11 one bullock-cart loaded with sugar-cane was standing at place "B" marked in the site-plan. He took it in possession and gave it in the supurdgi of Basdeo and prepared the Supurdgi- nama Ext. Ka-12. Exts.1 to 4 are the blood stained and plain earth ad Khokha of the cartridges. He searched the accused persons, but they could not be apprehended. On 28.02.1981 after completing the investigation, he submitted charge-sheet Ext. Ka-13. Before submitting the charge-sheet, he obtained warrant and process under Sections 82 and 83 Cr.P.C. against the accused. They are Exts. Ka-14 to Ka-19. On the back of these warrants, there are the reports of S.I. Virendra Singh. The reports are Exts. Ka-20 to Ka-25. Proclamations issued are Exts. 26 to Ka-31. Seven reports of their back are Exts.32 to Ka-37. Exts Ka-38 to Ka-43 are the orders for attachments and Exts Ka-44 to Ka-49 are the reports behind them. Fard attachments of the accused are Exts. Ka-50 to Ka-53. All these attachments were made by S.I. Sri Lokendra Pal Singh. Their rep;orts are also written by him. He is familiar with his handwriting. In his cross-examination he has stated that after registration of the case at about 12 in the noon till 12 O'clock in the night one report of Gamblint Act case was entered at 07:40 pm, then he said that case property under Section 13 Gambling Act was deposited and at that time report of gambling was not entered. He had sent Liladhar for medical examination from the place of occurrence.

24. His 'Rawangi' from the police station is entered on 03.12.1980 at 06:10 am. Till his Rawangi, no report of any cognizable offence was lodged. The special report of this case was sent through Special Messenger. He had reached the spot in Jeep. He has not written about the injuries of Liladhar in G.D. at it is not necessary.

He has not noted down the time of recording the statement of complainant in the case diary. His statement was recorded at the police station when he had come to lodge the report, hence the time has not been written. In the case diary, he has not written the time of going for investigation. Similarly the time for reaching on the spot is also not written. The time is written in the Panchayatnama. The time is given of beginning of writing of panchayat-nama. During the investigation he did not record the statement of Chaukidar of village Gangpur. He did not record the statement of the constable who took the dead-body for post-mortem. He did not deem it necessary to send the blood stained earth for examination to Chemical Examiner. The blood was found at one place. He did not take the chothes of Liladhar in his possession. He stated "Lash Kay Uttar Purab Ko Karib Aath Kadam Par Khokhey Parey They. He has stated that he does not show this place specifically in the site-plan Ext. Ka-10. In his site-plan, he has not shown the witnesses being present behind the bullock-cart. He has also not shown the place where Liladhar was beaten. He has not written in the case diary that Liladhar had the Parchi of sugar-cane. He had no knowledge that Liladhar had it. He had seen the place regarding which there was dispute between the accused and the complainant, but he did not prepare its site-plan. It is wrong to suggest that there report was lodged anti-time and under his evidence. It is also wrong that Liladhar had no injuries and he got them written by the doctor. P.W. Hetram has not stated before him that the remaining accused are friends of Govind and Chhadami. Het Ram had stated before him that *"Merey Larkey Liladhar Nay Mujhey Kal Bataya Tha Ki Inhi Sab Log Ram Dayal Kay Chabutra Par Salah Kar Rahey They."* Liladhar had not stated before him " Karua Ney Budh Singh Ko 2-3 Lathi Mari." He had stated that "Lathi Meri Thi". Liladhar had stated that 'Om Prakash Merey Upar Lathi Chori Thi". He had not stated that he fell down. It is wrong to suggest that he has written fictitious things in the case diary.

25. In their statement under Section 313 Cr.P.C. accused denied the prosecution allegation and the evidence adduced against them. They stated that they have been falsely implicated in the case due to enmity. The other accused have denied to be intimate with Govind and Chhadami. Govind and Chhadami have admitted that they are real brothers and Babu is their brother-in-law (Bahanoi). Rest they have denied. The accused have not produced any oral defence. They have filed the following documents:-

i. Khatauni extract of village Lakhimpur Gopal Singh, Tehsil Kasganj, Etah of 1383 Fasli to show the mutation order dated 17.02.1977.

ii. Photostat copy of sale-deed dated 30.04.1983 executed by Ant Ram in favour of Ram Dayal and Roshan Lal son of Gopisingh and Maya Devi wife of Ram Dayal.

26. Learned counsel for the surviving appellant Karua submitted that there is no allegation against accused appellant regarding causing of any form injury to the injured Liladhar. The witnesses have stated that appellant Karua was armed with Lathi and he gave lathi blow to deceased. However, the evidence with regard to causing of lathi blow to the deceased by the appellant Karua is not flawless. There is difference in the statement of witnesses of PW-1 and PW-2 with regard to manner and

mode of commission of crime and there is no consistency in their statement with regard to sequence of events which led to death of the deceased. PW-1 informant Hetram has stated that he was told by his son Liladhar that prior to date of the incident the accused persons had assembled in the Chaupal of Ram Dayal heard that they were planning the murder of Budh Singh, but this fact is not stated in FIR. Thus, the story of hatching of conspiracy of murder amongst accused persons, one day prior to the incident has been developed only to give a colour to prosecution version, and it does not inspire confidence. Had there been any conspiracy prior to commission of murder amongst accused persons as stated by PW1- and PW-2, they would have been alarmed and must have taken some steps to secure the life of the deceased from any murderous assault. PW-1 and PW-2 have no where stated in their statement under Section 161 Cr.P.C. that Karua had caused three lathi blows on the deceased, but PW-2 has stated in his evidence before the court that he had seen that Karua had caused three lathi blows, while he was sitting on sugar-cane buffalo-cart. This statement has been developed only to correspond this with postmortem report of the deceased, in which three lacerated wounds have been recorded on his person.

27. In postmortem report, cause of death has been shown as ante-mortem firearm injuries. PW-1 Hetram has also developed his version from FIR and statement under Section 161 Cr.P.C. during trial where he has stated that Karua had dragged the deceased from Bullalo-cart and brought him down.

28. PW-1 has stated in his examination in chief that Karua had given lathi blow to the deceased while riding the Buffalo-cart, but this statement is product of a leading question posed by prosecution counsel, in reply to that question "whether any one had given lathi blow to Budh Singh". He next submitted that the injuries of Liladhar are of simple in nature and can be manufactured or manipulated to falsely implicated the accused/appellant for a serious charge like murder.

29. PW-1 has stated in his evidence that Karua and Om Prakash are resident of other village and accused Ran Singh (since acquitted by trial court) is also a resident of the village of Karua. He has clarified that Govind, Chhadami and Ram Dayal are his co-villagers. Karua and Ran Singh are Yadav by caste. PW-1 has stated in his cross-examination that he had scribed this fact that as soon as the cart stopped, three persons climbed thereon and assaulted Liladhar. He had not given such statement to Darogaji. In fact PW-1 was not present on the spot, there are several contradictions in the statement of PW-1 from his previous statement recorded under Section 161 Cr.P.C. and that contained in written statement Ext. Ka-1, which form basis of FIR. He has also held in cross-examination that three accused persons had fired one shot each at the deceased to make his statement correspond with fire arm injuries shown in postmortem report.

30. Appellant Karua has not been assigned any motive to commit the offence or to share common object of committing murder of the deceased. He had nothing to do with the deceased or injured Liladhar (PW-2).

31. He next submitted there there is inconsistency in sequence of events narrated by PW-1 and PW-2 *interse* which

creates a doubt in truthfulness of prosecution version. It is quite unnatural that Liladhar had over heard the conversation of accused Ram Dayal, Chhadami, Govind as well as Om Prakash who were engaged in consultation of committing murder of Budh Singh at the Chaupal of accused Ram Dayal, as deceased was physically strong.

32. PW-1 has stated that deceased was a wrestler, accused persons used to object regarding tethering of cattle by the witness as said land was adjacent to the agricultural plot of Govind and Chhadami. Due to physical strength of deceased Budh Singh they could not succeed to grab the portion of the land of the witness.

33. This is also not natural that the accused persons out of whom three persons were armed with firearms had spared PW-1 the father of the deceased without causing even slight injury to them and only one accused Om Prakash has caused slight injuries on his son Liladhar by lathi blow.

34. He also stated that one accused Ran Singh who was charged under Section 120B IPC has been acquitted by learned trial court on two counts firstly an accused cannot be charged under Section 120B IPC all alone, for an offence under Section 120-B IPC the charge has to be framed against all the accused persons who are alleged to have been involved in hatching conspiracy and secondly, there was no evidence on record to prove the charge of criminal conspiracy against him. Even Liladhar who is sole witness of conspiracy has categorically stated that Ran Singh and Babu were not present in the Chaupal of Ram Dayal, where other accused persons were hatching conspiracy.

35. He lastly submitted that there is medical inconsistency in the case. According to eye-witness accounts three accused persons Govind, Chhadami and Ram Dayal allegedly fired at Budh Singh and according to witnesses their shot hit him, but in medical evidence the doctor PW-5 found one wound of exit which is injury No.6 and other injuries such as injury Nos.4 and 5 which are firearm injuries of entry. The doctor has opined that these three injuries could be result of only two shots. Learned counsel also drew attention of the Court towards postmortem examination of the deceased, in which it is stated that on internal examination stomach was found empty, small intestine was half full, large intestine was also half full. This state of contents of stomach and intestine of the evidence makes it evident that deceased had not taken any foodstuff prior to the incident, inasmuch as he had not eased himself prior to death on that day. Whereas PW-1 has stated that the deceased has taken one or half paratha before leaving the home for sugarcane factory. He has stated that Budh Singh had taken some break-fast before departure, thus the eye-witness account is not consistent with Medical evidence on this score also, as it is well settled that stomach gets empty after 5-6 hours of taking meal. This supports defence version that the deceased was killed on the way by some unknown miscreants in the darkness of late night and not in the light of morning as stated by witnesses. Learned counsel also submits that in fact, none of the witnesses had seen the occurrence of killing of the deceased, otherwise their evidence would be consistent with medical evidence.

36. With above submissions, learned counsel for the appellant prayed for acquittal of surviving appellant Karua and

submitted that the prosecution has failed to prove its case beyond reasonable doubt.

37. Per contra, learned A.G.A. submitted that the contention raised by learned counsel for the appellant are by and enlarge taken by defence before trial court also, but same has been duly addressed by the learned trial court while recording conviction of the accused persons including surviving appellant Karua for charge under Sections 147,148, 323/149 and 302/149 IPC and proper sentence has been passed against accused appellants after proof of charges. The case is based on eye-witness account of PW-1 and PW-2, which is duly corroborated by medical evidence. There is no occasion to disbelieve evidence of injured witnesses PW-2 Liladhar who is brother of the deceased and his presence on the spot was quite natural, as father and two sons were off to Nagariya sugar-mill for crushing the sugar-cane loaded on a buffalo-cart. PW-2 Liladhar was driving the buffalo-cart and deceased was sitting on sugar-cane, their father PW-1 Hetram was following the buffalo-cart on foot from behind alongwith his brother Basdev and witness Puse. PW-1 and PW-2 both have testified that parchi (slip) of sugarcane was with PW-2 Liladhar and same could not be given to S.O. as it was required to be produced at factory gate for cane crushing.

38. There is no medical inconsistency between eye-witness account of witnesses and injuries shown in postmortem report of the deceased. The contents of stomach are not decisive to ascertain time of death.

39. Learned A.G.A. lastly submitted that the impugned judgment is based on due appreciation of evidence and application of law. The impugned judgment and order requires no interference in the present appeal.

40. We have gone through the entire record and re-appreciated the evidence on record in the light of submissions made by learned counsels for the parties in instant appeal and also passed the impugned judgment under challenge.

41. According to testimony of PW-1 and PW-2 PW-1 was accompanied by his brother Basdev and Pusey at the time of incident, as they were walking behind Buffalo-cart, on which deceased were sitting. Pusey had filed an application alongwith affidavit on 03.11.1982 before the trial court wherein he has stated that it is wrong to say that he had witnessed the incident. He came to the spot on hearing the news of killing of Budh Singh alongwith his father Het Ram and Basdev and other persons, he found Liladhar in injured condition on the spot and Budh Singh was lying dead.

42. With above affidavit statement, he has expressed his disinclination to testify as a witness in the case, whereas according to prosecution version he escaped due to fear of accused persons to avoid to appear as a witness in the case. Basdev and Pusey are named witnesses of chargesheet. Surviving accused Karua has stated his age as 25 years at the time of his statement under Section 313 Cr.P.C. in the year 1983 which depicts that at present he would be of 68 years of age. The other witness Basdev has also not been examined by prosecution for reason that he also belonged to the family of the deceased.

43. In the instant case some strong indicators in favour of prosecution version,

the incident allegedly occurred on 02.12.1980 at around 06:30 am. The distance of police station from place of occurrence is shown as 5 mile (around 7 ½ Kms). The son of the informant was killed in the incident on the spot, even then, FIR was lodged at 09:05 am at police station concerned. The informant has stated that he went to police station on foot, just after the incident, leaving the dead body of the deceased in the presence of his other son Liladhar (PW-2) who also received injuries in the incident, which was caused by one of the accused namely Om Prakash by lathi. Thus FIR in the present case, on its face, value appears to be lodged promptly. There is eyewitness account of two witnesses of fact, who are father and real brother of the deceased, and one of the witnesses himself injured. The testimony of injured is placed on high pedestal. The mode and manner of the incident has also been described in the FIR, and motive of commission of crime is also introduced which has been reiterated in the statement of the witnesses recorded by Investigating Officer under Section 161 Cr.P.C. as well as in their sworn testimony before the court. However, on a meticulous examination of the evidence of said eye-witnesses, PW-1 Hetram and PW-2 Liladhar some anomalous situation surfaces which finds no plausible explanation in their evidence. There are also flaws in investigation, seven accused persons are named in written report Ext. Ka-1, however, the FIR was lodged against five named accused persons and two named accused Run Singh and Baboo were left in the FIR. His name was included during investigation, the trial court has rightly acquitted Run Singh on the ground that there is no evidence to connect him for charge of criminal conspiracy under Section 120(B) IPC in hatching conspiracy to commit murder of the deceased Budh Singh alongwith other accused persons.

44. In the said statement at the end of written report Ext. Ka-1 the assailants are assisted by Ran Singh Ahir, R/o Mirapurwa and Baboo Lodh, R/o Chak Thanaganj., there is no material to connect them with the offence in question. In fact, the Investigating Officer filed chargesheet against Run Singh without any supportive material collected against him during investigation. The other accused Baboo Lodh in written report who is said to be brother-in-law of main accused Govind and Chhadami was not chargesheeted and did not face trial.

45. In prosecution evidence, this fact surfaced that the place of incident is 1 km away from the village of the informant and deceased. According to FIR version and testimony of PW-1 and PW-2 the five named accused persons namely Govind, Chhadami, Ram Dayal, Om Prakash and Karua emerged from western side *gunders (Shrubs)*, when the deceased Budh Singh was going to unload sugarcane at Nagariya Sugar Mill; the sugarcane was loaded on a Buffalo cart, which was driven by PW-2 Liladhar who is real brother, his father Hetram (PW-1) accompanied by his brother Basdev and relative Pusey was following them. The incident occurred within limit of village Gangpur, H/o of kunwarpur near phooti ghata culvert. The accused Govind, Chhadami and Ram Dayal are co-villagers of the deceased and witnesses. The accused Om Prakash and Karua are resident of some other village. The motive has been imputed against accused Govind and Chhadami who are real brothers. Other accused persons are stated to be intimated to Govind and Chhadami. The motive of commission of offence is shown as some land dispute between the deceased and witnesses. On one hand, accused Govind and Chhadami and on the other hand

regarding tethering of cattle by informant side on said land. The main dispute was between the deceased and two accused persons, as deceased was a wrestler and physically strong. The accused persons could not succeed to dispossess him from piece of of land. No enmity had been suggested by prosecution with the deceased and witnesses.

46. Accused Ram Dayal stated in his statement under Section 313 Cr.P.C. that he had purchased a land in Nagla Hamirpur, due to which witnesses got enraged, he has been falsely implicated due to enmity. Accused Karua has stated that there was no enmity between him and deceased side, there might be some enmity, but he is not aware of that. Accused Om Prakash has stated that he has been falsely implicated due to village party bandi and enmity. Accused Govind and Chhadami have also pleaded any specific enmity with the informant side and has given a general statement that this case was instituted against them, due to enmity.

47. There is some contradiction in sequence of events mentioned by the informant in FIR and his sworn testimony before the court as PW-1. In FIR he has stated that as soon as the accused persons came across the buffalo cart driven by Liladhar, on which deceased was sitting. Then Govind and Chhadami challenged Budh Singh and asked Liladhar to stop the cart, as soon as the cart stopped, Govind, Chhadami and Karua climbed over it. Liladhar tried to stop them, and in the meanwhile Om Prakash started assaulting Liladhar by Lathi and Karua had also attacked Budh Singh by lathi. Thereafter, all the five accused persons had brought down the deceased from the card and made him stand. The accused Govind, Chhadami and Ram Dayal had fired shots at the deceased by the respective country made pistol, which hit him and he fell down and died instantly.

48. According to informant, he went to police station from the place of incident to lodge the FIR which is scribed by one Nathuram, R/o of Gangpur, the scribed of written report Ext. Ka.-1 was not produced in evidence. However, the informant has acknowledged the contents of written report and his thumb impression affixed thereon.

49. PW-1 Hetram has not stated about the role played in the offence by Karua on first hand and when he was asked by prosecution counsel, as to who had given a lathi blow to Budh Singh, he replied that Karua had given lathi blow to Budh Singh on climbing the cart. Thus this statement is product of a leading question. In FIR, PW-1 has stated that three persons Govind, Chhadami and Karua got on the Buffalo cart, but in his examination in chief before the Court he stated that four persons namely Govind, Chhadami, Ram Dayal and Karua got on the vehicle. The conspiracy introduced during investigation does not inspire confidence. In FIR, there is no such statement that witness Liladhar had stated to the informant that on the eve of the fateful incident when he was passing through the Chaupal of accused Ram Dayal on pathway, he heard the conversation of Ram Dayal, Govind, Chhadami, Karua, Ran Singh and Baboo were engaged in consultation, that if Budh Singh happens to move alone he should be killed, because he is physically strong in his family. If this is so, and Liladhar had ever heard the consultation amongst accused persons it is quite natural that he would have become alarmed and discussed this matter while

returning at home with his brother Budh Singh (deceased) and father, but he kept mum all alone and surprisingly disclosed this fact after death of his brother. This fact does not find mention in FIR. In contradiction to statement of PW-2 on this score, PW-1 stated the Liladhar had told him about the consultation amongst accused persons at the Chaupal of Ram Dayal one day prior to the incident.

40. PW-1 has stated in his evidence that Liladhar had told him that all the named accused persons Govind, Chhadami, Ram Dayal, Om Prakash, Karua, Ran Singh and Baboo were assembled at the Chaupal of Ram Dayal and in consultation to eliminate Budh Singh, if he happened to meet them alone.

41. PW-2 Liladhar who is alleged witness of this consultation has stated in his statement that he ever heard consultation amongst Govind, Chhadami, Ram Dayal, Om Prakash and Karua at the Chaupal of Ram Dayal at around 04:00 pm on one day prior to the incident. He categorically stated that Ran Singh and Baboo were not present in the chaupal. Thus, it appears that this conspiracy aspect has been introduced to fortify prosecution version.

42. PW-1 has submitted in his statement that prior to consultation there was a Rahat and Well in joint possession of the witness and accused Govind and Chhadami. After consultation that Rahat and Well came into share of Govind and Chhadami, he had not taken any compensation for that. He had denied the defence suggestion that Govind and Chhadami had stopped supply of water to their field. He admitted that he still irrigates his field from the water of Rahat and Well. Thus apart from that a piece of land, regarding which some dispute is lying between the parties regarding tethering of Baboo by witnesses. There is not other motive that has been proved against accused persons. However, we cannot over look the legal position that in a case based on direct evidence the motive loses much of its significants. PW-1 has stated in his evidence that he accompanied with his brother Basdev and Pusey was following the buffalo cart, on which deceased Budh Singh and his other son Liladhar were present. Out of these two witnesses Pusey has filed an affidavit before trial court that he was not present on the spot and he had not seen the incident and came to the place of incident after being apprised of it alongwith Hetram (PW-1), Pusey and other persons of the village. The buffalo cart was driven by PW-2 Liladhar and deceased was sitting over sugarcane loaded on it. It does not appeal to reason that what was occasion for PW-1 to follow the cart from village to sugarcane factory on foot and that too being accompanied by his brother and co-villager Pusey. Even, Basdev the real brother of PW-1 was not produced as a witness during the evidence.

43. The injuries of PW-2 Liladhar are proved by Dr. S.D. Mishra (PW-3) who stated that he conducted medico legal examination of the injured Liladhar on 02.12.1980 at 04:05 PM and six injuries were found on his person, out of which five injuries were visible and one is complaint of pain on upper portion of head. The injuries were detected on left side of back, right side of back, right shoulder joint, left thigh. All the five visible injuries are in the nature of contusion. In the opinion of doctor the injuries were of simple nature and might have been caused by some blunt object lathi and danda. These injuries could not be manufactured, but if a person has

endurance to bear such pain, then only can the same may be manufactured.

44. Be that it may, one thing is clear that the injuries found on person of injured Liladhar is not on vital part, are of simple nature and were not of substantial nature. There is difference of ten hours between infliction of alleged injuries and medico legal examination. Therefore, on the basis of this injury report, the prosecution evidence may not be taken on its face value. Both the witnesses of facts have stated in their sworn testimony that all three accused persons namely Govind, Chhadami, Ram Dayal and Karua are armed with country made pistols had fired one shot each at the deceased, when he was brought down from the cart by them and the shots fired by them hit him. In another words, according to witnesses of facts, the deceased suffered three fire arm shots, but in postmortem report of the deceased, two wounds of entry and one wound of exit was detected on the person of a deceased, as an ante-mortem injury.

45. PW-5 Dr. M.K. Agarwal who is author of the postmortem report has stated in his cross-examination that cause of death was antemortem fire arm injuries, which was sufficient to cause death. 14 pellets were present in cavity of lungs, left lung was lacerated, total 29 numbers of pellets were retrieved from the dead body, which was sealed and sent to S.P. Etah. Cause of death was shock and hemorrhage. The deceased might have received three blows of blunt object and two fire arm shots. Thus, on the point of number of shots fired at the deceased there is inconsistency between ocular account of the incident and medical evidence. This fact is also relevant that PW-5 has stated in his evidence that stomach of the deceased was empty at the time of postmortem, which indicates that he would have taken meal 5-6 hours before his death. In postmortem examination, both the intestines were found half full and half empty.

46. According to prosecution version, the incident occurred at around 06:30 AM at a place when the deceased and witnesses were on way to sugar factory from their native village. The place of the incident is said to be 1 km far from the resident of the deceased. This implies that the deceased would have started for sugar factory for crushing of sugarcane loaded on Buffalo cart at around 06:00 am. The incident occurred in the month of December, 1983, which is a season of winter.

47. The stomach of the deceased was empty in postmortem report, even if the contention of learned A.G.A. is accepted that it is not necessary that the bowel of a person gets clear in the morning when he goes to ease himself, for many reasons like constipation or deceased would have thought to get himself eased on the way to sugar factory, yet the factum of emptiness of stomach is inconsistent with the testimony of PW-1, wherein he has stated in cross-examination that the deceased had taken some breakfast, just before leaving the home on fateful day. He could have taken one or half paratha as a meal, if this statement of PW-1 is accepted, then there is no reason as to how the stomach of the deceased was found empty in postmortem report, where there is some what a difference of around half hours, for taking of said breakfast and homicidal death of the deceased caused by assassins. In medico legal jurisprudence, this is settled position that it takes 4-6 hours to complete the process of digestion of food, and thereafter the meal be send to intestines. This medical

inconsistency fortifies the defence version that in fact the deceased was killed by some assailants in the darkness of wee hours on fateful day and not at the time as propounded by prosecution in FIR version and in its evidence.

48. The above medical inconsistency between ocular testimony and medical evidence creates a cloud on testimony of prosecution witnesses and also creates a strong doubt about the fact that whether they had actually seen the incident of killing of the deceased.

49. In this connection a recent judgment of Hon'ble Supreme Court in **Moti Vs. State of U.P. AIR, 2003 SC (1897)** is relevant, wherein it has been observed as under:-

"14. It is rather surprising that the High Court should find this part of the medical evidence as being of no consequence at all. The High Court referring to this part of the medical evidence has observed : "In our opinion the stomach contents are not very material to determine the time of incident." We are of the considered opinion this view of the High Court is wholly erroneous. It may be possible to contend that contents of the stomach may not always be an indicator of the time of death. But in a case where stomach is empty and the prosecution evidence is that the murder had taken place shortly after the deceased had his last meal, to say that the contents of the stomach have no material hearing on the determination of the time, in our opinion, is not acceptable. In the instant case, time of death being a material factor to verify the presence of the eye-witnesses it was obligatory for the prosecution to have clarified the discrepancy between the medical evidence and the oral evidence. The prosecution having failed to do so, in our opinion, a serious doubt as to the time of incident and the presence of the eye-witnesses at the time of incident and their narration of the incident also becomes doubtful.

15. Incidentally, we may also notice that even according to the prosecution, appellant Moti had no motive to commit the crime in question. The incident as narrated by the eye-witnesses having taken place in a place where there was no proper light to identify the actual accused who dealt the fatal blow also contributes to the factum of doubt in the prosecution case. Therefore, in our opinion, the prosecution has failed to establish its case against the appellant Moti."

50. The investigation is also faulty in the case. The Investigating Officer has admitted that he has not shown the place in site plan from where the witnesses had seen the occurrence. He has also not indicated the track of the route of arrival of accused persons. However, he has shown the plants of goothers from which the accused persons allegedly emerged. The blood stained earth, plain earth and two empty cartridge shells recovered from the place of incident, were not sent to chemical /material examination to Forensic Science Laboratory. The witnesses have improved their version in their sworn testimony before the court from the earlier statement recorded under section 161 Cr.P.C. on many aspects, which is apparent from the testimony of prosecution witnesses and that of investigating officer of the case.

51. All the appellants, except appellant No.4 Karua have already died during the

pendency of present appeal. Inasmuch as appellant Karua is said to have inflicted three lathi blow to the deceased, resulting in three lacerated wounds on his persons which appear to be simple in nature. On perusal of the postmortem report and the opinion of doctor who is author of postmortem report, the cause of death was shock and hemorrhage caused by fire arm injuries i.e. injury No.5 and 6. Thus, appellant Karua cannot be said to have contributed the resultant death of the deceased Budh Singh.

52. In view of foregoing discussion based on re-appreciation of evidence on record, we are of the considered opinion that learned trial court fell into error for recording conviction of the accused persons for said charges. Prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. Consequently, the conviction and sentence passed by learned trial court against the accused Karua for charge under Section 147, 302/149 IPC fails and is liable to be set-aside.

53. The conviction and sentence awarded by trial court to the surviving appellant Karua is set-aside. He is acquitted of said charges under Section 147, 302/149 IPC, he has been enlarged on bail by order of this Court during the pendency of the appeal. He need not surrender. He is directed to furnish two sureties and a personal bond to the satisfaction of the trial court in compliance of Section 437-A Cr.P.C. within fifteen days from today. The Criminal Appeal is accordingly allowed.

54. Let a copy of this judgment trial together with the trial court record be forwarded to learned trial court for compliance.

55. Before parting with the case, we deeply appreciate the valuable assistance rendered by Sri Priyansh, Advocate, learned Amicus Curiae who argued the case on behalf of surviving appellant Karua. He will receive Rs.25,000/- as honorarium from High Court, Legal Aid Committee.

(2025) 9 ILRA 162
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Appeal No. 2936 of 1987

Pramod Kumar & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
G.N. Chandra, M.C. Singh, V.K. Jaiswal

Counsel for the Respondent:
A.G.A.

Issue for Consideration

The matter pertains to matrimonial disputes in which wife of appellant no.1 alleged that she was harrased and beaten by in –laws for dowry.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2), 389, 482-Indian Penal Code,1860-Section 307-Powers of appellate court-Quashing of conviction based on compromise in matrimonial disputes-When the wife and husband settle their differences, resume cohabitation, and have lived peacefully for decades with children born from the marriage, continuation of criminal proceedings would be an abuse of process law-The conviction can be set aside to preserve family harmony.

Held

The court held that where the medical report and doctor's testimony reveal that the injuries caused to the victim were simple and not on any vital part of the body, the offence u/s 307 IPC is not made out-Even though Section 307 IPC is non-compoundable, the High Court in exercise of its appellate jurisdiction can, in exceptional circumstances, quash the conviction to secure the ends of justice, particularly in cases arising out of matrimonial disputes where parties have amicably settled and are living together.(Para 22 to 47)

Case law Cited

Kiran Tulsiram Ingle Vs Anupama P.Gayakwad 2006 0 Supreme (Bom) 1151 & Vinay Kumar Vs State of U.P. & Anr. 2016 0 Supreme (P & H) 243,Gian Singh Vs State of Punjab (2012) 10 SCC 303, Ramgopal & Anr. Vs State of M.P. 2021 Legal Egale (SC) 569, B.S. Joshi & Ors Vs State of Haryana & Anr (2003) 4 SCC 675, Nikhil Merchant Vs Central Bureau of Investigation & Anr (2008) 9 SCC 677,M.P. Vs Laxmi Narayan & Ors (2019) 5 SCC 688-referred to.

List of Acts

Criminal Procedure Code,1973, Indian Penal Code,1860.

List of Keywords

Medical report, non-compoundable, offence, appellate jurisdiction, conviction, victim, injuries, matrimonial disputes, compromise.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 2936 of 1987
From the Judgment and Order dated 26.09.2025 of the High Court of Judicature at Allahabad.
Pramod Kumar & Ors Vs. State of U.P.

Appearances for Parties

Counsel for Appellant(s)
G.N. Chandra, M.C. Singh & V.K. Jaiswal
Counsel for Respondent/Opposite Party
A.G.A

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard Mr. M.C. Singh, learned counsel for the appellant and Mr. Raj Bahadur Verma, learned A.G.A. for the State.

2. The instant criminal appeal is directed against the judgment and order dated 8th December, 1987 passed by the Special Judge (E.C. Act) in Sessions Trial No. 376 of 1984 (State Vs. Pramod Kumar & 2 Others) under Sections 307 and 307/34 I.P.C., Police Station-Zarifnagar, District-Budaun, whereby the accused-appellant nos. 1 and 3 have been convicted for the offence punishable under Section 307 I.P.C. and accused-appellant no.2 Ram Patti has been convicted for the offence punishable under Section 307/34 I.P.C. and they had been sentenced as follows:

"1. Accused-appellant no.1 was sentenced to undergo rigorous imprisonment for a term of 5 years and fine of Rs. 5,000/- and in default thereof, he had to further undergo 1 year rigorous imprisonment;

2. Accused-appellant no.3 Smt. Vidyawati was sentenced to undergo 3 years rigorous imprisonment and a fine of Rs. 2,000/- and in default thereof, she had to further undergo six month rigorous imprisonment;

3. Accused-appellant no.2 Ram Patti was sentenced to 2 years rigorous imprisonment and fine of Rs. 1,000/- and in default thereof, he had to further undergo 3 months rigorous imprisonment."

3. Brief facts, giving rise to the questions involved in this case, are that the parents of the complainant Kiran and the accused persons, namely Pramod Kumar, Ram Patti and Smt. Vidyawati are the resident of village Auntar, Police Station Zarifnagar District Budaun. Accused-

appellant no.1 Pramod Kumar is son of accused-appellant nos. 2 and 3, namely, Ram Patti and Smt. Vidyawati. In the complaint, it was alleged that the marriage of complainant Kiran was solemnized with accused-appellant no.1 before a year of the said complaint. In the marriage, father of the complainant gave sufficient dowry, according to his means and status. The accused-appellant being greedy did not satisfy with the dowry so given by her parents. All of them started teasing the young bride for bringing inadequate dowry and she was subjected to day today teasing and ill-treatment from her husband and in-laws. She was also subjected to beating by the accused-appellant time and again for additional demand of dowry. On the fateful night of 5th June, 1983, the accused-appellant no.1 Pramod Kumar, as usual started beating the complainant Smt. Kiran. His parents also joined him after some time. All of them caught hold of and placed her hands beneath legs of cot and was given merciless beating by fists and legs. They also shouted while beating the complainant Smt. Kiran for bringing a motor-cycle and Rs. 5000/- from her parents, otherwise she would be finished one day or other. On showing her inability to fulfil the said additional demand of dowry, the accused-appellant Pramod Kumar became so furious and exhorted his parents to teach her a lesson. On the said exhortation, accused-appellant no.3 Smt. Vidyawati brought kerosene oil and poured the same on her and then, the accused-appellant Pramod Kumar set her on fire on which the complainant Kiran started shouting for her help. Hearing the said voice, witnesses, namely, Lakhan, Mahendra Pal, Girdhari and Several persons of the village came to the house of the accused-appellants. On reaching there, they saw the terror which was writ large on the face of the complainant Kiran. Seeing them complainant Kiran sobbed and disclosed the entire story to them in coherent sentences. The family members of the complainant also came there. Soon after she was rescued and was relieved from her greedy parents in-laws. The complainant Kiran was brought to her parents house. The matter could not be reported to police immediately due to threat and of accused-appellants. The complainant could manage to go to the District Police Chief on 7th June, 1983 and gave written report to him personally. The District Police Chief directed the Station Officer of concerning Police Station to register the case against the accused persons and get the complainant medically examined. The report was handed over at Police Station on 9th June, 1983 at 08:15 a.m. and on the basis of which chik report (exhibit ka-3) was prepared. The relevant entries was also made in General Diary. The carbon copy has been proved as Exhibit Ka-4. The complainant Kiran was medically examined at Primary Health Centre, Digawan on 9th June, 1983 at 10:30 a.m. When the police of Police Station Zarifnagar did not investigate the case properly and submitted final report in the case before the court concerned on 21st November, 1983, in the meantime, the complainant had filed private complaint in the court of Munsif Magistrate (Economic Offences). The complaint has been proved as (Ext. Ka-2). The learned Magistrate after recording the statement of complainant, Smt. Kiran under Section 200 Cr.P.C. and also after perusing other papers submitted therewith did not agree with the investigation of the police and rejected the final report vide his detailed order dated 2nd May, 1984. The accused persons were committed to the court of Sessions. The sessions trial as received to the Court of

Special Judge (E.C. Act), Budaun by way of where accused persons put in appearance and stood charge as aforesaid and have been facing trial hither to.

4. The Prosecution, in support of its case, has examined Prosecution Witness No.1 i.e Complainant Smt. Kiran, Prosecution Witness No. 2 Lakhan, as witnesses of fact. Besides the above, the prosecution has also banked upon the evidence of constable Onkar Singh (P.W.-3) and Dr. T.A. Rafat as (P.W.-4).

5. P.W.-3 constable Onkar Singh is a formal witness. He has proved the chik report, copy of G.D. and a copy of N.C.R. lodged by one Ram Pratap. This report has been proved as Exhibit Ka-4.

6. Dr. T.A. Rafat (P.W.-4) had examined the injuries of the complainant Kiran and he had found following injuries on the person of complainant Kiran:

"1. Superficial burn 2 cm. X 1.5 cm over left ring finger at the top.

2. Diffuse tramatic swelling in the centre of right hand. Moment of the hand was found normal .

3. Tramatic swelling and pain over right elbow and upper part of right arm."

7. After medically examined the complainant Kiran, the P.W.-4 had opined that injury no.1 was simple and caused by burn and was about 4 days old. Injury nos. 2 and 3 were also simple and caused by some some blunt weapon and they were also about four days old. The injury report of the complainant Kiran had been proved as Exhibit Ka-6.

8. In the statements recorded under Section 313 Cr.P.C., the accused-appellants denied their participation in the alleged crime and attributed to their false implication in the case. The accused-appellant Pramod Kumar had stated in his statement that merely as the complainant Kiran was beautiful, he married her without taking any dowry from her parents. He further stated that only in order to grab money from him, the father of the complainant engineered the false case in collusion with the complainant Kiran. The accused-appellant no.2 Ram Patti had stated in his statement that under the influence of her father and witness Lakhan, who was in his party, had filed the present case against them. He further stated that he had not demanded any dowry in the marriage of his son i.e. accused-appellant Pramod Kumar. The same version had been reiterated by the accused-appellant no.3 Smt. Vidyawati.

9. Initially, the accused-appellant had stated that they would adduce oral defence but thereafter vide endorsement dated 15th October, 1987, it was mentioned that no oral defence would be adduced.

10. After considering the oral as well as documentary evidence adduced during the course of the trial and after hearing the counsel for parties, vide impugned judgment and order dated 8th December, 1987 passed in Sessions Trial No. 376 of 1984 (State Vs. Pramod Kumar & 2 Others) under Sections 307, 307/34 I.P.C., Police Station-Zarifnagar, District-Budaun, the trial court found the accused-appellant nos. 1 and 3, Pramod Kumar and Smt. Vidyawati guilty for the offence punishable under Section 307 I.P.C., whereas the accused-appellant no.2 Ram Patti was found guilty for the offence punishable

under Section 307 read with Section 34 I.P.C. After conviction, the trial court has accused-appellant no.1 to undergo rigorous imprisonment for a term of 5 years and fine of Rs. 5,000/- and in default thereof, he had to further undergo 1 year rigorous imprisonment; accused-appellant no.3 Smt. Vidyawati to undergo 3 years rigorous imprisonment and a fine of Rs. 2,000/- and in default thereof, she had to further undergo six month rigorous imprisonment; and the accused-appellant no.2 Ram Patti was sentenced to 2 years rigorous imprisonment and fine of Rs. 1,000/- and in default thereof, he had to further undergo 3 months rigorous imprisonment.

11. It is against this judgment and order of the trial court, the present criminal appeal has been filed.

12. When the present appeal was entertained, a Coordinate Bench of this Court vide order dated 14th December, 1987 enlarged the accused-appellants on bail. During the pendency of the appeal, since the appellant nos. 2 and 3, namely, Ram Patti and Smt. Vidyawati had died, the present appeal at their behest had already been abated vide order dated 3rd September, 2013 by a Coordinate Bench of this Court.

13. After 2013, when this appeal has come up for hearing before this Court on 11th September, 2025, Mr. M.C. Singh, learned counsel appearing for appellant no.1 has stated that since the appellant no.1 Pramod Kumar and the complainant Smt. Kiran who are husband and wife respectively after settling their disputes amicably, had entered into compromise just after filing of the instant appeal i.e in the year 1987 and they are living happily as husband and wife along with their children. In that regard the learned counsel for the appellant no.1 has also filed a joint affidavit annexing the copy of the compromise which has been brought on record.

14. In the joint affidavit, which has been brought on record, both appellant no.1 (deponent no.1 in the affidavit) and the complainant Kiran (deponent no.2 in the affidavit) have stated as under:

"1. That the deponent no. 1 is the appellant no.1 in the aforesaid appeal and doing pairvi of his case and as such they he is well acquainted with the facts deposed to below:-

2. That the deponent no.2, who is victim-injured, W/o appellant no.1, who is well acquainted with the facts deposed to below.

3. at is stated that the That the outset it appellant no.2 and 3, namely Rampatti and Smt. Vidyawati, died long back. The aforesaid appeal against appellant no.2 and 3, stands abated by this Hon'ble Court by order dated 03.09.2013.

4. That both the deponents who are husband and wife respectively, with best efforts of members of both the families living together since 1988, till date.

5. That from their wed lock there are four children, three boys, namely, Anshul aged about 30 years, Ankit aged about 28 years and Himanshu aged about 26 years, and one daughter, namely, Monika aged about 25 years.

6. That at present deponent no.2, Smt. Kiran W/o Pramod Kumar, has no grudge/complaint against Pramod Kumar appellant no.1.

7. That as both the deponents settled their disputes with the efforts of elder members of both the families and living together since 1988, after filing the aforesaid appeal in this Hon'ble Court in the year 1987.

8. That both the deponents jointly prayed that as both the deponents settled their disputes, who are husband and wife and living together and from their wed lock four children born and has no grudge/complaint against each other the aforesaid appeal be disposed of acquitting the appellant no.1.

9. That it is pertinent to mention here that first informant Sri Suratpal, who was father in law of deponent no.1-appellant no.1, and father injured-victim, Smt. Kiran, died long back about 15 years back. of

10. That this joint affidavit be treated as the part of the criminal appeal and be considered at the time of the disposal of the aforesaid appeal."

15. Learned counsel for the accused-appellant no. 1 submits that the offence under Section 307 I.P.C. is a non-compoundable offence, as is clear from the perusal of the table referred to under Section 320 Cr.P.C. However, this Hon'ble Court having appellate jurisdiction can quash the proceeding in cases of non compoundable offences.

16. Learned counsel for the accused-appellant no.1 has further submitted that though the offence under Section 307 IPC is non-compoundable offence, but, in the present case, when the parties have entered into compromise and both are living as husband and wife under one roof alongwith their two sons and daughter, impugned judgment and order of the trial court against the accused-appellant no.1 may be quashed as the pendency of the instant appeal against him, would be an abuse of process of the law and this Court will vitiate the purpose of compromise and cordial relationship between the husband and wife along with their children.

17. Learned counsel for the accused-appellant no.1 has lastly submitted that the Bombay High Court as well as Hon'ble Punjab and Haryana High Court in the cases of **Kiran Tulsiram Ingle vs. Anupama P. Gayakwad** reported in *2006 0 Supreme (Bom) 1151* and **Vinay Kumar Vs. State of U.P. and another**; reported in *2016 0 Supreme (P & H) 243*, even after conviction, Hon'ble Courts have been pleased to quash the criminal proceeding during the pendency of the appeal, exercising the power under Section 482 Cr.P.C.

18. To further bolster the aforesaid submissions, learned counsel for the applicants has placed reliance upon the following judgments of the Punjab and Haryana High Court, Bombay High Court and the Apex Court:

i. **Vinay Kumar (Supra);**

ii. **Kiran Tulsiram Ingle (Supra);**

iii. **Gian Singh vs. State of Punjab** reported in (2012) 10 SCC 303; and

(iv) **Ramgopal & Anr. Vs. State of Madhya Pradesh reported in** *2021 Legal Egale (SC) 569.*

In view of aforesaid submissions, learned counsel for the applicants submitted that the proceedings of the above mentioned criminal case are liable to be quashed by this Court as also the consequences thereof, i.e., conviction of the applicants is also liable to be set aside.

19. Alternatively, learned counsel for the appellant no.1 submits that since, as per the medical examination report and the testimony of the doctor who had medically examined the victim/complainant as P.W.-4, all the injuries found on the person of the victim/complainant are simple in nature and not on the vital part of her body and also the superficial burn injury found on the body of the victim/complainant is at the top of her left ring finger and such injuries are not sufficient to cause death of the victim, therefore, no case under Section 307 I.P.C. for causing such injuries upon her is made out against the appellant no.1, whereas, for such injuries, at the most offence under Section 324 I.P.C. would be made out against the appellant no.1.

20. Learned counsel for the appellant no.1, thus, submits that as Section 324 I.P.C. provides for a maximum punishment of three years and fine, therefore, considering the age of the appellant no.1 i.e. about 66 years, the period of incarceration already undergone by him and the period of the instant appeal, which is pending since 1987, he may be acquitted while setting a side the impugned judgment.

21. Mr. Raj Bahadur Verma, learned A.G.A. for the State has opposed the prayer made by the learned counsel for appellant no.1 by contending that since appellant no.1 has been convicted for the offence under Section 307 I.P.C. which is non-compoundable, this Court, in exercise of appellate powers under Section 374 read with Section 389 Cr.P.C. cannot quash the impugned judgment and order of the conviction passed against appellant no.1 on the basis of compromise. However, learned A.G.A. for the State could not dispute the fact that as per the medical evidence, the appellant no.1 at most could be convicted under Section 324 I.P.C. and not under Section 307 I.P.C. He also could not dispute the age of the appellant no.1 and the pendency of the instant appeal.

22. I have considered the facts and circumstances of the case, arguments so advanced by the learned counsel for the appellant no.1 and learned A.G.A., perused the material available on record including the impugned judgment of conviction and specifically the contents of the compromise so entered into between the parties.

23. Before proceeding any further, this Court, first, may come on the merits of the impugned judgment of conviction. During the course of argument, learned counsel for the appellant no.1 did not question the entire judgment of the trial court. He has only questioned a part of the same in which the trial court has convicted the appellants including appellant no.1 under section 307 I.P.C. instead of Section 324 I.P.C. even though the offence under Section 307 I.P.C. was neither made out nor proved against them as per the medical evidence and the testimony of P.W.-4.. As per the medical examination report of the victim/complainant and the testimony of P.W.-4 who medically examined the victim/complainant, the injuries found on the person of the victim/complainant are simple in nature and not on the vital part of her body, meaning thereby that the same could not sufficient to cause death to the

victim in any manner. For causing such injuries, only Section 324 I.P.C. could be made out against the appellant no.1 and said offence under Section 324 I.P.C. could be proved against him. Therefore, this Court is of the considered opinion that the impugned judgment of conviction of appellant no.1 is liable to be altered from Section 307 I.P.C. to Section 324 I.P.C. Hence the conviction as awarded by the trial court under the impugned judgment is hereby modified to that extent only.

24. Now at this juncture, the issues which are up for consideration before this Court are whether (i) this Court first can convert non-compoundable offence into compoundable one (Section 324 I.P.C. in the facts of the present case), and (ii) quash/set aside the impugned judgment and order of conviction passed against appellant no.1 while exercising its appellate power under Section 374/389 Cr.P.C. to arrive at the ends of justice and in view of compromise so arrived at between the parties, who are none other than the husband and wife, when there is no equally efficacious course is open for the parties to get the relief prayed for herein.

25. There are authoritative judicial precedents where the Apex Court has approved the quashing of the proceedings when it found that they emanated from mutual marital discord, even though the proceedings included some offences, which were not compoundable (Section 324/307I.P.C. in the facts of the present case). In the present case, the dispute is matrimonial in nature, i.e., between the husband and wife in which the husband, father-in-law and mother-in-law of the wife have been convicted by the court below and they filed an appeal against the order of conviction. In the appeal, they have been enlarged on bail and for happy and peaceful life of the husband and wife as also the life of their son, they have settled their disputes during the pendency of the appeal and both husband and wife arrived at a compromise. After compromise, they are living together happily along with their sons and daughter, namely, Anshul aged about 30 years, Ankit aged about 28 years, Himanshu aged about 26 years and Monika aged about 25 years respectively. This Court, therefore, deems it appropriate and expedient to quash the impugned judgment and order of conviction, as it will result into a fruitless and vain exercise in the peaceful life of husband and wife as also their sons and daughter.

26. In various judgments, the Apex Court has held that if the parties have settled their disputes and arrived at a compromise for their safe and peaceful life, the High Court, in exercise of its inherent power i.e. under Section 482 Cr.P.C., can quash the criminal proceedings initiated under the compoundable and non-compoundable sections if the same relate to offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or **offences arising out of matrimony relating to dowry etc., or family disputes, as it would be unfair or contrary** to interest of justice to continue with criminal proceeding or continuation of criminal proceeding would tantamount to abuse of process of law and to secure ends of justice.

(Emphasis added)

27. The Apex Court in the case of **B.S. Joshi & Others VS. State of Haryana & Another** reported in (2003) 4 SCC 675 has opined that while exercising power of quashing under Section 482 Cr.P.C., it is

for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court chances of an ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes. Paragraph nos. 2, 13 to 15 of the said judgment, which are relevant, read as follows:

"2.The question that falls for determination in the instant case is about the ambit of the inherent powers of the High Courts under Section 482, Code of Criminal Procedure (Code) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. The scope and ambit of power under Section 482 has been examined by this Court in catena of earlier decisions but in the present case that is required to be considered in relation to matrimonial disputes. The matrimonial disputes of the kind in the present case have been on considerable increase in recent times resulting in filing of complaints by the wife under Sections 498A and 406, IPC not only against the husband but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings or the First Information Report or complaint filed by the wife under Sections 498A and 406, IPC, can the prayer be declined on the ground that since the offences are non-compoundable under Section 320 of the Code and, therefore, it is not permissible for the Court to quash the criminal proceedings or FIR or complaint.

...

13. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

14. There is no doubt that the object of introducing Chapter XX-A

containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

(Emphasis added)

28. The Apex Court in the case of **Nikhil Merchant Vs. Central Bureau of Investigation & Anr.** reported in (2008) 9 SCC 677, keeping in mind the decision of the Apex Court in the case of **B.S. Joshi (Supra)** has held that this is a fit case where technicality should not be allowed to stand in the way in quashing of the criminal proceedings, since, in our view, the continuance of the same after compromise arrived at between the parties would be a futile exercise. For ready reference, Paragraph nos. 29, 30, 31 which are relevant, read as follows:

"29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi's case (supra) becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

29. The Apex Court in the case of the State of **Madhya Pradesh Vs. Laxmi Narayan & Others** reported in (2019) 5 SCC 688, has held that mere compromise between the parties would not be ground to accept the same resulting in acquittal of the offender, who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and therefore, there is no question of sparing a convict found guilty of such a crime. But the Apex Court in the said judgment, taking into consideration the judgment of the Apex Court in the case of **Gian Singh (Supra)**, has opined that while exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice causing extreme injustice to him by not quashing the criminal cases. The Apex Court has also held that mere mention of Section 307 cannot be sole basis of decision for not quashing of the criminal proceedings. Relevant paragraph nos. 15 to 18 read as follows:

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High

Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

16. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.

17. In view of the above and for the reasons stated, the present appeal is allowed. The impugned judgment and order dated 07.10.2013 passed by the High Court in Miscellaneous Criminal Case No. 8000 of 2013 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law. Criminal Appeal No.350 of 2019

18. So far as Criminal Appeal arising out of SLP 10324/2018 is concerned, by the impugned judgment and order, the High Court has quashed the criminal proceedings for the offences punishable under Sections 323, 294, 308 & 34 of the IPC, solely on the ground that the accused and the complainant have settled the matter and in view of the decision of this Court in the case of Shiji(supra), there may not be any possibility of recording a conviction against the accused. Offence under Section 308 IPC is a non-compoundable offence. While committing the offence, the accused has used the fire arm. They are also absconding, and in the meantime, they have managed to enter into a compromise with the complainant. Therefore, for the reasons stated above, this appeal is also allowed, the impugned judgment and order dated 28.05.2018 passed by the High Court in Miscellaneous Criminal Case No. 19309/2018 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law."

30. This Court has an occasion to have a glance on the opinion and observations made by the Apex Court in paragraph nos. 54 to 60 in the famous case of **Gian Singh (Supra)**, after referring various judgments of the Apex Court on the same issue involved herein also, which read as follows:

"54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in

wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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

60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia, Dharampal, Arun Shankar Shukla, Ishwar Singh, Rumi Dhar (Smt.). and Ashok Sadarangani. The principle propounded in Simrikhia that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal15, the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla. In Ishwar Singh, the accused was alleged to have committed an offence punishable under Section 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.) although the accused had paid the entire due amount as per the settlement

with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani was again a case where the accused persons were charged of having committed offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi, Nikhil Merchant and Manoj Sharma and it was held that B.S. Joshi, and Nikhil Merchant dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing."

31. This Court may record that from perusal of the judgments of the Apex Court in the cases of **B.S. Joshi, Nikhil Merchant, Manoj Sharma** reported in (2008) 16 SCC 1, which are two Judges' Division Bench and **Gian Singh (Supra)**, which is Three Judges' Full Bench, it is clear that in all the cases, the Apex Court has held that since Section 320 Cr.P.C. does not limit or affect the powers under Sections 482 Cr.P.C. or under Articles 226 and 136 of the Constitution of India, the High Court can quash the criminal proceedings/FIR/complaint. In the case of **B.S. Joshi (Supra)**, Two Judges' Bench of the Apex Court has specifically held that the object of introducing Chapter XX-A in I.P.C. was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife or coerce her or her relatives to satisfy unlawful demands of dowry. A hyper technical view would be counterproductive and would act against the interests of women and against the object for which this provision was added. There is likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women for settling earlier. This is not the objective of Chapter-XX-A of I.P.C.

32. In the case of **Gian Singh (Supra),** the Three Judges' Full Bench of the Apex Court has specifically observed that where High Court quashes a criminal proceeding, having regard to the fact that dispute between the offender and victim has been settled, although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt,

crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude, under special statutes, like Prevention of Corruption Act or the offences committed by public servants, while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may, within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R, if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

33. Similarly, in the case of **Ramgopal (Supra)** relied upon by the learned counsel for the appellant no.1, the Apex Court has opined that such powers of wide amplitude can be exercised carefully in the context of quashing of criminal proceedings, bearing in mind (I) nature and effect of the offence on the conscious of the society; (ii) seriousness of injury, if any, (iii) voluntary nature of compromise between the accused and victim and (iv) conduct of the accused persons, prior to and after the occurrence of the purported offence.

34. The relevant paragraph nos. 18 and 19 of the Judgment of the Apex Court in the case of **Ramgopal (Supra)** read as under:

"18. It is now a well crystallized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect

of offences 'compoundable' within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

35. In **Narinder Singh** reported in (2014) 6 SCC 466, the two Judges' Bench of the Apex Court, while framing guidelines for quashing the proceedings in cases where the offenses involved are non-compoundable, has quashed the **criminal proceedings of FIR** after accepting the compromise entered into between the parties. It is pertinent to mention here that in the said case, Offence under Section 307 I.P.C. was alleged against the accused for attacking the victim, who sustained injuries also, i.e. non-compoundable offence was involved.

36. Similarly, in the case of **State of Madhya Pradesh (Supra)**, offence under Section 307 was alleged against the accused for attacking the victim, who sustained gun shot injuries. Seeing the nature of such heinous crime, which has harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, the Three Judges' of Apex Court has refused to quash the criminal proceedings on the basis of settlement/agreement/compromise entered into between the parties.

37. However, in the case in hand, this Court after examining the medical evidence adduced during course of trial like medical examination report of the victim/complainant and the testimony of the doctor who has been examined as P.W.-4 has already held that since no case under Section 307 I.P.C. is made out against the appellant nos. 1 to 3, whereas Section 324 I.P.C. would be made out against them in that place, as such the conviction under Section 307 I.P.C. is liable to be altered to Section 324 I.P.C. as above.

38. Apart from the above, the facts of the case of **State of Madhya Pradesh (Supra)** is not applicable in the facts of the present case having regard to the altercation of conviction from Section 307 I.P.C. to Section 324 I.P.C.

39. The law laid down by the three Judges Full Bench of the Apex Court in the case of **Gian Singh (Supra)** leaves the matter concluded and it remains res-integra no more, which has not been overruled by any court of law i.e. more number of judges of the Apex Court and as such, still holds the field.

40. The objections raised by learned AGA could not have been more convincingly answered than by the ratio of the above noted pronouncement by the Apex Court in **Gian Singh's case** as the well as the **Ramgopal's case** as relied upon by the learned counsel for the appellant as referred to above.

41. This Court has no hesitation to record here that in the case of **Gian Singh**

(Supra), inherent power under Section 482 Cr.P.C. has been exercised whereas in the case of **Ramgopal (Supra)**, extraordinary power under Article 142 of the Constitution of India has been exercised and this Court now sitting in appellate jurisdiction under Section 374 read with Section 389 Cr.P.C. However, this Court has also kept in mind that the aim and object of law is not only to punish the culprit, but, the objective of the law is also to maintain peace, tranquillity, prosperity and harmony in society as well as in the country. If there is a compromise between husband and wife and they are living to live together and to lead happy family life, then it will also be ideal in building our society. Marriage is a sacred ceremony of our society, the main objective of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions, resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

42. In the facts of the present case, the marriage of the appellant no.1 was solemnized with the complainant/victim but after some time of their marriage, the relations between the two became strained and incompatible resulting in initiation of present criminal proceedings by the complainant against her husband, father-in-law and mother-in-law i.e. appellant nos. 1 to 3 (appellant nos. 2 and 3 have died during the pendency of the appeal). Thereafter, the appellant nos. 1 to 3 were convicted for an offence under Sections 307 and 307/34 I.P.C. under the impugned judgment. Against the said judgment of conviction, the appellants filed the present appeal. During the pendency of the appeal, after settling their all the disputes, appellant no.1 and the complainant have arrived at a compromise and now they are living happily as husband and wife under the same roof along with their major sons and daughter, and enjoying their happy family life. If this Court, in exercise of its powers under Section 374 Cr.P.C. read with Section 389 Cr.P.C. does not quash the impugned judgment of conviction, then the happy life of husband i.e. appellant no.1 and the complainant along with their major children will be ruined, especially the happy future life of sons and daughter of appellant no.1 and the complainant who have not seen anything yet and whose golden future remain yet to commence and who will suffer a lot. At the same time, it is also relevant to notice here that if a husband or a father (appellant no.1 herein) has to go to jail again, not only his wife (complainant herein) but also their children would suffer from mental trauma and they would also have to face humiliation and bad feelings in the society.

43. Accordingly, while relying upon the law laid down by the Three Judges' Full Bench of the Apex Court in the case of **Gian Singh (Supra)**, and Two Judges' Bench of the Apex Court in the case of **Ramgopal (Supra)** and considering the peculiar facts and circumstances of the

present case, this Court, in exercise of its powers under Sections 374/389 Cr.P.C., allows the present appeal and quash the impugned judgment of conviction dated 8th December, 1987 passed by the Special Judge (E.C. Act), having regard to the contents of the compromise so entered into between the parties, the nature of the offence and injuries sustained by the complainant, the period of incident i.e. 1983, the fact that there is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the appellant no.1 and the complainant, both are living together happily as husband and wife and also looking to the fact that they are senior citizens and their children have attained majority.

44. Consequently, the impugned judgment and order dated 8th December, 1987 passed by the Special Judge (E.C. Act) in Sessions Trial No. 376 of 1984 (State Vs. Pramod Kumar & 2 Others) under Sections 307 and 307/34 I.P.C., Police Station-Zarifnagar, District-Budaun is set aside on the basis of compromise so entered between the appellant no.1 and the victim/complainant, who are none other than the husband and wife. Hence, the appellant no.1 is acquitted from the charge so altered by this Court herein above i.e. Section 324 I.P.C.

45. Since the appellant no.1 is reported to be on bail, he needs not surrender before the court below, unless he is wanted in any other case on compliance of the provisions of Section 437-A Cr.P.C. His bail bond shall be deemed to have been discharged.

46. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Budaun, henceforth, for necessary compliance.

47. Subject to the observations made above, the present criminal appeal is **allowed**.

48. There shall be no order as to costs.

49. The original records already summoned shall be returned to the concerned court below.

(2025) 9 ILRA 180
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 3211 of 2012

Kaushal @ Alok Chauhan ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Sudeep Kumar Pathak

Counsel for the Respondent:
Govt. Advocate

Issue for Consideration

The case involves murder took place during the marriage ceremony. The main issue required the appellate court to determine the trustworthiness of evidence.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 302 r/w 34-Challenge to-Conviction-testimony of the witnesses cannot be discarded merely because they are relative or family member of the victim-The presence of the father (PW-1) and brother(PW-2) at the marriage ceremony was deemed probable, and their consistent testimony as eye-witness was accepted-the appellant's act along with

the co-accused, established a "common intention" to commit murder, thus holding him liable for conviction u/s 302 IPC, regardless of who fired the fatal shot. The appeal dismissed.

Held

The court considered the entire evidence on record-The matter pertains to direct evidence, where motive attributed on the accused of helping co-accused in the design to exterminate the deceased -On the point of conversion of conviction of appellant from section 302 IPC to Section 304 IPC refused as the act attributed on accused appellant was intentional and also having knowledge that by the act death would be caused- No infirmity in appreciation of evidence carried out by the trial court.(Para 11 to 33)

Case law Cited

Goverdhan & Anr. Vs State of Chattisgarh & Shyam Behari Mishra & Anr Vs State of U.P., Gowrishankara Swamigalu Vs State of Karnataka & Anr., Jitendra Kumar Mishra alias Jittu Vs State of M.P.,Ashok Kumar Chaudhary Vs State of Bihar,M.Nageswara Reddy Vs State of A.P. & Ors& State of Punjab Vs Gurupreet Singh & Ors-referred to.

List of Acts

Criminal Procedure Code, 1973-Section 374(2)-Indian Penal Code,1860.

List of Keywords

Motive, direct evidence, deceased, co-accused, exterminate, infirmity, common intention, charge sheet, absconding, "one fire arm", gunshot injury, morturay, liqour, cross-examination, affidavits, incident, bullet detrimental, marriage ceremonies,ingredients.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 3211 of 2012

From the Judgment and Order dated 16.09. 2025 of the High Court of Judicature at Allahabad.

Kaushal @ Alok Chauhan Vs. State of U.P.

Appearances for Parties

Counsel for Appellant(s)

Sudeep Kumar Pathak

Counsel for Respondent(s)

Govt. Advocate

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

1. The present appeal is preferred against the judgment of conviction and sentence dated 09.07.2012 passed by the court of Additional Sessions Judge, Court No.2, Etawah in Sessions Trial No.59 of 2006 (State Vs. Kushal alias Alok Chauhan S/o Krishan Chandra Chauhan), in Case Crime No.383 of 1997, Police Station Kotwali, District Etawah, under Section 302 read with Section 34 of I.P.C.

2. The accused-appellant is punished with imprisonment for life and Rs.10,000/- fine, in default, two years additional imprisonment for committing the offence of murder committed in furtherance of common intention.

3. According to First Information Report (F.I.R.), two accused, namely, Deepak Dixit alias Deepu S/o Hari Om and Kaushal alias Alok Chauhan (appellant) have been named in the F.I.R. lodged by Sri Sunder Lal Gupta, father of deceased Kamlesh Kumar Gupta for offence under Section 307 I.P.C., when both the accused had fired at the deceased through their country made pistol on 13.07.1997 at 11:00 p.m., while the deceased, informant and other persons were gathered at the marriage ceremony of sister of Shailesh Kumar alias Popey Jain solemnized at Jain Dharmshala Lalpura, Etawah. The deceased was standing at the gate of Jain Dharmshala when the two accused, named above came and opened fire at Kamlesh Kumar Gupta, he was taken to hospital by his father and brother after visiting the police station, situated at a distance of half a kilometer from the place of incident. In the district hospital, Etawah, the accused was declared brought dead.

4. After investigation, the charge sheet has been submitted only against the present appellant, but not against the accused Deepak Dixit alias Deepu, who has been summoned by the trial court by order dated 24.03.2007 for offence under Section 302 I.P.C., invoking Section 319 Cr.P.C. This accused remained absconding and his file was separated.

5. The prosecution has produced two witnesses of fact, P.W.-1 Sunder Lal Gupta and P.W.-2 Shailesh Kumar Gupta, respectively, the father and brother of deceased.

6. The prosecution has produced five formal witnesses. P.W.-3 Constable Bhaiya Lal was the constable clerk (the scribe of Chik F.I.R. and G.D); P.W.-4 S.I. Subedaar Singh, the first Investigating Officer, who has also conducted inquest on the death body of deceased; P.W.-5 Inspector Karanvir Singh Sachan, the second Investigating Officer, who has carried out further investigation and submitted charge sheet; P.W.-6 Dr. P.C. Pandey, who has informed the police station concerned about the death of deceased; and P.W.-7 Jagdish Chandra Gupta, the Nursing Assistant of District Hospital, where Dr. S.C. Dubey (deceased) has conducted post mortem examination.

7. The statement of accused has been recorded under Section 313 Cr.P.C., wherein he has denied the allegation of murder on him; stated that he has been falsely implicated and the entire documentary evidences are false; showed ignorance as to why he has been implicated in the case as his name is not Kaushal, but Alok Chauhan.

8. Sri Sudeep Kumar Pathak, learned counsel for the appellant has submitted that there is no evidence on record of the trial to connect the appellant for offence of murder in furtherance of common intention. The appellant is known by the name of Alok Chauhan and never known by the name of Kaushal; the F.I.R. and the statement of witnesses recorded during investigation is silent about the role of named accused who caused detrimental fire; the evidence on the record shows enmity of deceased with co-accused Deepak Dixit, but no enmity is shown against the appellant; the main accused Deepak Dixit has not been charge sheeted; the witnesses of fact are related witnesses and shaky in their statements about knowing Kaushal prior to the lodging of F.I.R.; there is marked improvement in the statement of witnesses; the witnesses of fact initially stated that they later came to know that Kaushal is also known by the name of Alok Chauhan; the witnesses of fact are not the eye witnesses, but pretended to be the eye witnesses and therefore, they have continuously made improvements in their statements on the basis of tutoring; the medical evidence does not corroborate with the eye witness account; the Investigating Officer initially raised doubt on Popey Jain, who has certain trade related issues with the deceased; during investigation, some of the witnesses have also stated through affidavits that it was an accident during the celebratory firing at the marriage ceremony; the appellant is in custody for nearly 12 long years, having no criminal history. The above mentioned points have not been dealt with by the trial judge in right perspective, resultant into recording of conviction. It is further submitted that the witnesses of fact are interested witnesses and their statements have to be appreciated cautiously, but the trial Judge has not evaluated the statements of witnesses of fact cautiously. The learned counsel has

relied on the cases of **Goverdhan and another Vs. State of Chattisgarh**[1] and **Shyam Behari Mishra and another Vs. State of U.P.**[2]**,** decided by the Division Bench of this Court by judgment dated 24.03.2023 in Criminal Appeal No.1092 of 2005.

9. **Per contra**, Sri Sushil Kumar Pandey, learned A.G.A.-I has opposed the arguments made by the learned counsel for the appellant and submits that the murder of Kamlesh Kumar Gupta was occasioned in full public view, when the people were gathered at the marriage ceremony of sister of Sri Shailesh alias Popey Jain at the gate of Jain Dharmshala Lalpura, Etawah. The incident has been witnessed by many persons, but none came forward to depose before the Court, except the father and brother of deceased. The assailant, namely, Deepak Dixit alias Deepu and his friend Kaushal, who had their residences in the same vicinity were being identified by the persons including P.W.-1 and P.W.-2. The accused-appellant, who has been identified during dock examination was familiar in the locality. It is not necessary that the correct name is known to all, as the persons are generally known by their nick names. The appellant, in the same way also known by the name of Kaushal and when the name of accused was clear, his name is mentioned accordingly. Deceased Kamlesh was shot at the gate of Jain Dharmshala on 13.07.1997 at 11:00 p.m., which is reported on 14.07.1997 at 00:20 a.m. and died due to gunshot injury, is apparent from the post mortem examination report. The main accused, though dropped after investigation has been summoned by the trial court under Section 319 Cr.P.C. The trial Judge has rightly appreciated the evidence and recorded conviction, which is required to be affirmed in appeal.

10. We have considered the rival submissions made by the parties. Perused the judgment passed by the trial court vis-a-vis the evidence on record.

11. After venturing into the facts, evidence and arguments, we have considered the power of the appellate court provided under Section 386 Cr.P.C. in the case of ***Gowrishankara Swamigalu Vs. State of Karnataka and Another***[3]*,* it has been held by the Supreme Court that the powers to be exercised by an Appellate Court are as wide as of the trial court. The Appellate Court can review the whole evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused, but where two views are possible on same evidence and the findings recorded by the trial court are not perverse, the appellate court should not interfere with the findings of the lower court.

12. Thus, the appellate court, firstly, to appreciate the evidence on record; and secondly, should interfere with the findings only when the view of appellate court is different from the trial court. Coupled with the observation that the finding recorded by the trial court is perverse.

13. It is also observed by the Supreme Court in the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of M.P.***[4] that the appellate court should be slow in interfering with conviction recorded by the trial court, but where evidence on record indicates that the prosecution has failed to prove the guilt of accused beyond reasonable doubt and that is a plausible view, different from the one expressed by the trial court, can be taken. The appellate court then should not shy away in giving benefit of doubt to the accused.

14. Keeping in view the above principles of law in mind, we have evaluated the facts and evidences. The incident occurred on 13.07.1997 at 11:00 p.m., at the gate of Jain Dharmshala Lalpura, Etawah. The police station is reportedly situated half a kilometer away from place of incident. The informant Sri Sunder Lal Gupta (P.W.-1), father of deceased had taken the deceased first to the police station from where to the District Sadar Hospital Etawah. The first information report was lodged under Section 307 I.P.C. at Police Station Kotwali, Etawah on 13.07.1997 at 11:40 p.m., registered as Case Crime No.383 of 1997.

15. The written information is dictated by the informant to one, Ram Prakash Gupta. It is disclosed in the written information that the informant, Sunder Lal Gupta, his son Kamlesh Kumar Gupta (deceased), his another son Shailesh Kumar Gupta, Arvind Verma S/o Ram Pal Verma, Kuldeep Gupta S/o Jagdish Prashad had gathered in the marriage ceremony of sister of Shailesh alias Popey Jain at Jain Dharmshala Lalpura Etawah. While the marriage ceremony 'Jaimala' was taking place, informant's son was standing at the gate of Dharmshala, when two accused namely, Deepak Dixit S/o Hari Om Dixit resident of Lalpura and his friend Kaushal came to the place, having country made pistols in their hands and opened fire at Kamlesh Kumar Gupta. He skipped one fire but suffered injury in his abdomen by another fire. Both the accused have sprinted away. It is also disclosed in the F.I.R. that Deepak Dixit and his family were inimical with Kamlesh Kumar.

16. Dr. P.C. Pandey (P.W.-6) gave a report to the police on 14.07.1997, Exhibit Ka-11 that Kamlesh Kumar Gupta succumbed to gunshot injuries at 00:20 a.m. It is on the basis of this report that the case is converted from Section 307 I.P.C. to Section 302 I.P.C.

17. It is required to be mentioned that the matter was of 1997, whereas the charge sheet has been submitted against the accused-appellant in the year 1997, but the trial commenced in the year 2006, as the accused-appellant was found absconding and process under Sections 82 and 83 Cr.P.C. have been initiated. The contention of the appellant for not appearing in the case was that his name is Alok Chauhan and not Kaushal. He then challenged the proceedings initiated against him under Section 83 Cr.P.C. in Criminal Misc. Application No.7484 of 1997 (Alok Chauhan Vs. State of U.P.). This Court while disposing of the application by order dated 26.11.1997 has made specific mention that the Magistrate before proceeding to pass any order under Section 83 Cr.P.C. shall satisfy whether any evidence has been collected to show the involvement of accused-appellant in the case. It is, thereafter, that the charge sheet has been submitted, trial concluded and judgment of conviction recorded.

18. The judgment of conviction is also challenged on the ground that the witnesses of fact are related witnesses, whose testimony is to be considered carefully. It is a settled position of law that the testimony of witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim. In such cases, Court has to adopt a careful approach in analyzing the evidence and if the testimony of related witness is found credible, the accused can be convicted. In the celebrated case of ***Ashok Kumar***

***Chaudhary Vs. State of Bihar*[5],** it is observed by the Supreme Court that the Court cannot lose sight of the ground realities that the members of the public are generally insensitive and reluctant to come forward to report and depose about the crime, even though it is committed in their presence. It is in this backdrop that the Supreme Court has held, not to brushed aside the testimony of the related witnesses, merely because they are interested, but a duty is cast on the court to scrutinize such evidence with greater care and caution. This judgment is also considered by the trial court. The law on the point of related witness is also dealt with by the Supreme Court in the cases of **M. Nageswara Reddy Vs. State of Andhra Pradesh and others**[6] & **State of Punjab Vs. Gurpreet Singh and others**[7]**,** wherein, it is held that the testimony of the witness cannot be discarded merely because the witness is related.

19. Before considering the deposition made by father and brother of deceased, as P.W.-1 and P.W.-2, respectively, it would be expedient to deal with the testimonies of formal witnesses and then the trustworthiness of witnesses of fact could be ascertained.

20. The first information report was registered by P.W.-3 Bhaiya Lal, who has deposed before the trial court that on 13.07.1997, he was holding the post of Constable Clerk in Police Station Kotwali, District Etawah when Sunder Lal Gupta (P.W.-1) came with a written information, written by Ram Prakash Gupta that Deepak Dixit alias Deepu and Kaushal had inflicted gun shot injuries on the son of informant, he registered the chik F.I.R. for offence under Section 307 I.P.C. He has also proved the general diary entry no.52 at 23:40 hours, he has been cross examined on various points to carve out a case of ante time F.I.R. It is mentioned in Exhibit Ka-3, the general diary entry that the injured was sent to District Hospital for medical examination and the injuries of injured were seen, from which blood was oozing out. The document and the statement of P.W.-3 clarifies that the deceased was first taken to police station and then to District Hospital, as has been mentioned in the written information.

21. Dr. P.C. Pandey, who was the Emergency Medical Officer of Dr. B. R. Ambedkar Combined Hospital (Male Section), Etawah has appeared in the case as P.W.-6 and proved the death report of the deceased Kamlesh Kumar Gupta as Exhibit Ka-11. It is specifically mentioned in the exhibit that Kamlesh Kumar Gupta aged about 30 years s/o Sunder Lal Gupta reached the emergency on 14.07.1997 at 00:20 a.m., brought by Constable Radha Charan of Police Station Kotwali, Etawah, who had gunshot wound and was brought dead. This intimation was received at the police station at 5:50 a.m. on 14.07.1997. S.I. Subedaar Singh P.W.-4 has made specific mention in his deposition that on getting the death report of deceased, the case was converted from Section 307 I.P.C. to 302 I.P.C. This witness has conducted inquest on the death body of deceased, which was carried out from 11:15 a.m. to 1:00 p.m. on 14.07.1997. He has proved the inquest report and other ancillary documents like photonash, chalanash, letter R.I. and letter C.M.O. He carried out inquest in presence of inquest witnesses, in whose opinion, the death was due to gunshot injury. The body was sealed and sent for post mortem examination, which was kept at the District Mortuary by P.W.-6 Dr. P. C. Pandey.

22. Dr. S.C. Dubey, who has conducted the post mortem examination on the death body of deceased Kamlesh Kumar Gupta on 14.07.1997 at 2:00 p.m., passed away when the case came up for trial. Hence, Jagdish Chandra Gupta (P.W.-7) the Nursing Assistant, who had assisted him during post mortem examination has proved the post mortem report as secondary witness stating that Dr. S.C. Dubey has conducted post mortem examination on the dead body of deceased Kamlesh Kumar Gupta and signed the post mortem examination report in his presence. He has identified the signatures and proved the same. The post mortem report reveals that the ante mortem injury is "one fire arm wound of entry 2 cm X 2.2 cm on front of lateral aspect of lower and lateral aspect of right side from chest about 8 cm below and lateral from right nipple. Mark of blackening, tattooing and charring present all around the wound in an area of 10 cm X 8 cm. Margins are inverted"

23. If the statement of Constable Bhaiya Lal (P.W.-3), Dr. P.C. Pandey (P.W.-6), Jagdish Chandra Gupta (P.W.-7) and the initial statement of S.I. Subedaar Singh (P.W.-4) is taken into consideration in totality. It reflects only one conclusive inference that Kamlesh Kumar Gupta suffered gunshot injury at night of 13.07.1997, who was taken to the police station, where he was found to be suffering from gunshot injury, blood was oozing out from the wound, then taken to the District Hospital, treated by Dr. P.C. Pandey (P.W.-6) and found that he was brought dead. Had there been an ante time F.I.R., the F.I.R. would have been lodged directly under Section 302 I.P.C. against the accused and not under Section 307 I.P.C. The learned trial court has rightly taken into consideration and held that the F.I.R. is within time without oblique motive of false implication. One more conclusive inference drawn is the death of Kamlesh Kumar Gupta was due to gunshot injury.

24. S.I. Subedaar Singh, the first Investigating Officer was entrusted with the investigation of the case on 13.07.1997, he has inspected the place of incident, prepared the site plan. The site plan was prepared by him on 15.07.1997, at the instance of informant, Sunder Lal Gupta (P.W.-1). He has also recorded the statement of Shailesh Kumar Gupta (P.W.-2). The site plan proved by him as Exhibit Ka-9 which reveals that the deceased was standing at the gate of Jain Dharmshala marked by english alphabet 'A'. The witnesses, P.W.-1 and P.W.-2 were standing at a place marked by english alphabet 'C'. It is shown that the accused had fired shots at a distance of two paces, the place of accused is shown by english alphabet 'B' and distance between the witness and the accused was five paces. During his cross-examination, he has stated that he came to the spot on 13.07.1997 five to seven minutes before 12:00 at night, where he found Ratan Chandra Jain, Rakesh, Suresh, Vinod alias Pappu and Popey. Marriage was of their sister. He has further stated that he came to know that there was some differences between deceased Kamlesh Kumar Gupta and Popey as both were partners in a business and thereafter, he thought it necessary to take statement of Popey. This angle of investigation shows that the Investigating Officer has also taken into consideration the relation between deceased and Popey in whose sister's marriage, the deceased and his family gathered. This further shows the presence of witnesses P.W.-1 and P.W.-2 at the place of incident. His inconsistent statement about the time of inquest will not

make this witness untrustworthy because later on he has made specific mention that the inquest was started at 11:15 a.m. instead of 7:15 a.m.

25. The second Investigating Officer Karnavir Singh Sachan (P.W.-5), who has carried out investigation from 20.08.1997 has recorded statements of witnesses. He has submitted charge sheet against the accused. During his cross-examination, he has made specific mention that on the basis of direction of the High Court, he inquired into and found that Alok Chauhan is also known by the name of Kaushal and further submits that he did not find it necessary to get the accused identified by the witnesses, as the accused resides in the same vicinity and known to persons. In his further cross-examination, he has stated that Rajesh and Neeraj gave affidavits disclosing therein that Kamlesh Kumar Gupta was in the influence of liquor, which led the fire from 315 bore pistol. The statement of this witness shows that the accused is known by the name of Kaushal. The deponents Rajesh and Neeraj did not appear as witnesses during trial. Moreover, the deceased under influence of liquor is not revealed from medical evidence. Neither Dr. P.C. Pandey (P.W.-6) nor the post mortem examination report Exhibit Ka-12 reveals that the deceased was under the influence of liquor. Not in defense either.

26. Therefore, the statements of formal witnesses have established the place of incident, the time of incident and the presence of witnesses in the marriage ceremony.

27. Now, the point of concern is the trustworthiness of related witnesses and the involvement of accused-appellant, who has been convicted and sentenced for offence under Section 302 read with Section 34 I.P.C. It is pertinent to point out here that the co-accused, as per the record placed, is still absconding.

28. Sri Sunder Lal Gupta, P.W.-1, father of deceased has lodged the F.I.R. His presence at the place of incident is not disputed, as he and his family members consisting of deceased and P.W.-2 were gathered in the marriage ceremony. He has witnessed the incident and is a probable witness. It is a general tendency that when the family visits marriage ceremonies, they tend to be together. The accused Deepak Dixit and Kaushal have been named in the F.I.R., which is prompt. The name of Kaushal is mentioned in F.I.R., as per the name disclosed by the people gathered at the place, but during investigation, the real name of Kaushal came into light and therefore the charge sheet has been submitted. During the cross examination, this witness has admitted giving an affidavit to the police and further submits that the Investigating Officer has not recorded his statement, though his statement has been recorded by the first Investigating Officer P.W.-4 S.I. Subedaar Singh and it is at his instance that the site plan was prepared. Merely giving an affidavit to the police by a witness cannot nullify the statement recorded by the Investigating Officer, when the witness is stating before the trial court about the incident. Moreover, the informant was present at the place of incident, he has seen the incident, he has reported the incident without delay and he knew the accused-appellant prior to the incident though he was not clear about the name of accused-appellant.

29. Shailesh Kumar Gupta (P.W.-2) has also stated in his examination-in-chief

that he was present at the place of incident along with other persons and witnessed the incident, wherein Deepak Dixit and Kaushal (who has been identified in the dock examination), had opened fire on Kamlesh Kumar Gupta. One bullet hit the deceased, whereas his brother skipped the second fire. He has also stated that Deepu fired first, which was skipped and the deceased suffered the second fire, which was shot by the accused-appellant. In his cross-examination, this witness has admitted that he has not made the statement before the Investigating Officer as to who had fired the first shot and also about the detrimental shot was fired by the accused-appellant. This statement of this witness is an improvement because it is nowhere the case even in the affidavit filed by this witness that the detrimental shot has been fired by the accused-appellant, but this improvement will not absolve the accused-appellant from his role of firing at the deceased. The evidence on record reveals that the accused-appellant came to the place of incident along with co-accused and fired a shot. It is therefore, the conviction has been recorded with the help of act committed by the accused-appellant in furtherance of common intention. As such, it is not of importance that who has fired the detrimental shot. This witness during his cross-examination has also stated that the fire was shot at his brother from a distance of ten paces. It has been argued by the learned counsel for the appellant that blackening, tattooing and charring are not possible if the fire was shot from a distance of ten paces. According to the site plan, the accused shot at the deceased from a distance of two paces. The laymen can never be sure about the distance until and unless it has been measured. The inconsistency in the statement of P.W.-2 Shailesh Kumar Gupta is not material in nature.

30. As such, the witnesses of fact are not only trustworthy and consistent in their statements, but their presence at the place of incident is also probable and they are the eye witnesses of the incident. They have also established the identity of the accused-appellant and his role of firing at the deceased.

31. We have considered the entire evidence on record, which are clinching in nature. The matter pertains to direct evidence, where the motive, though at the back stage, but attributed on the accused-appellant of helping the co-accused in the design to exterminate the deceased. The trial court has considered the entire evidence in right perspective. There is no infirmity in appreciation of evidence carried out by the trial judge. It is rightly held that the offence of murder is committed by the accused-appellant in furtherance of common intention. Therefore, we did not find any reason to interfere with the findings of the trial court. The grounds raised in the appeal are not tenable in the eyes of law. The appeal deserves to be dismissed.

32. We have also considered the arguments of learned counsel for appellant on the point of conversion of conviction of appellant from Section 302 I.P.C. to Section 304 I.P.C. and also gone through the judgments cited, but the evidence in the present case does not qualify the ingredients of Section 304 I.P.C., as the act attributed on accused-appellant was intentional and also having knowledge that by the act death would be caused.

33. Thus, the appeal is **dismissed**. The accused appellant is on bail. His bail bonds are forfeited. He is directed to be taken into custody.

34. The judgment of this Court along with the record shall be sent to the Trial Court for taking necessary steps so that the accused-appellant may surrender and serve the remaining sentence.

(2025) 9 ILRA 189
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.09.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 4197 of 2025

Krishna Rastogi ...Appellant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Appellant:
Deepak Kumar

Counsel for the Respondents:
G.A., Praveen Kumar

Issue for Consideration

The appeal was filed to set aside the order dated 10.04.2025. The allegation was that the appellant along with the co-accused persons, called the victim's son and caused his murder.

Headnotes

A. Criminal matter-Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Ac),1989-Section 14-A(2), 3(2)5-Bhartiya Nayay Sanhita,2023-Sections 103(1), 3(5), 191(2), 190, 61(2) and section 35 of Arms Act-The court applied that general principles governing the grant of bail-Considering the facts and circumstances, the nature of offence, complicity of the accused, nature of injury, evidence, role assigned to the present appellant, a case for bail was made out.

Held

The court overruled the lower court decision, finding that despite serious charges, includng those under SC/ST Act, the established legal criteria for granting bail were met in the appellant's favour.(Para 7 to 10) (E-6)

List of Acts

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act),1989, Bhartiya Nayay Sanhita,2023, Arms Act.

List of Keywords

Charges, injuries, languishing in jail, prosecution story, criminal history, impugned FIR, false and fabricated, release, Dhampur, independent witness, complicity, community, victim,personal bond,sureties, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act),1989, Bhartiya Nayay Sanhita,2023, Arms Act.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 4197 of 2025
From the Judgment and Order dated 11.09.2025 of the High Court of Judicature at Allahabad.
Krishna Rastogi Vs. State of U.P. & Anr.

Appearances for Parties

Counsel for Appellant(s)
Deepak Kumar
Counsel for Respondent(s)
G.A., Praveen Kumar

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1. In this case notice has already been served upon the informant.

2. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant-**Krishna Rastogi** to set aside the order dated 10.04.2025 in Bail Application No. 1837 of 25 and to release him on bail in Case Crime No.564 of 2024 under Sections

103(1), 3(5), 191(2), 190 and section 61(2) of BNS, section 3(2)5 SC/ST Act and Section 35 Arms Act, P.S. Dhampur, District Bijnor.

3. Heard learned counsel for the appellant, the learned AGA for the State-respondent no.1 and perused the entire record.

4. According to the prosecution case, the incident took place on 16.12.2024 and the FIR of this incident has been lodged on the same day stating therein that on the day of incident appellant along with other co-accused persons called him and caused the murder of her son and for this incident the information has given to her by the friends of her son.

5. Submission of learned counsel for the appellant is that the appellant is innocent and has been falsely implicated in this case. The appellant has not committed any offence as alleged in the impugned FIR. Further submission is that the prosecution story is totally false and fabricated. Essential ingredients to constitute the offence under the SC/ST Act are lacking in the matter. Appellant is languishing in jail since **19.12.2024.** The appellant is having no criminal history. Learned counsel for the appellant next submitted that the appellant has been implicated due to enmity, There is no independent witness of the incident and nothing incriminating has been recovered from the possession of the appellant. The appellant had no motive to commit the murder. Further submission is that the impugned order rejecting the bail application of the appellant suffers from infirmity and illegality warranting interference by this Court.

6. On the other hand, learned A.G.A. as well as learned counsel for the opposite party no.2 opposing the prayer for bail had have submitted that the appellant committed the present offence having knowledge that the victim belonged to S.C./S.T. Community. There is no infirmity or illegality in the impugned order.

7. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

8. Having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, role assigned to the present appellant and the nature of injury, the Court is of the opinion that the appellant has made out a case for bail. The Court below erred in rejecting the bail application of the appellant. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

9. Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is hereby set-aside.

10. Let the appellant-**Krishna Rastogi** involved in aforesaid case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

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

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

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

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

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

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

(2025) 9 ILRA 191
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 60 of 2011
&
First Appeal No. 70 of 2011

Rajesh Chhabra ...Appellant
Versus
Radhey Lal Jeswani & Ors. ...Respondents

Counsel for the Appellant:
K.K. Tiwari, Rishikesh Tripathi

Counsel for the Respondents:
Arvind Srivastava, Ashish Kumar Singh, Hari Manish Bahadur Sinha, Jitendra Kumar Srivastava, Pushkar Srivastava, Ram Dayal Tiwari, Udayan Nandan

Issue for Consideration

Matter pertains to whether the ex parte decree dated 31.03.1999 passed in Original Suit No. 28 of 1996, which declared ownership and possession of Bungalow No. 329, Jhokan Bagh, Jhansi in favour of plaintiff's father, operated as res judicata regarding title and possession of disputed property, or whether it could be impeached in present proceedings as a fraudulent and collusive decree obtained against a minor not duly represented before the court.

Headnotes

Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 - s. 21 - Specific Relief Act, 1963 - ss. 34, 38 and 41(h) - Code of Civil Procedure, 1908 - s. 10, O. 9 R. 13 - Limitation Act, 1963 - s. 6 - Guardian and Wards Act, 1890 - s. 39 - Appellant filed a civil suit seeking declaration of ownership and possession over Bungalow No. 329, Jhokan Bagh, Jhansi, contending that property originally belonged to his grandfather who had constructed it and remained its absolute owner - Upon his grandfather death, property devolved upon his son, i.e. appellant's father - Appellant alleged that ex parte decree dated 31.03.1999, passed in Original Suit declaring ownership and possession in favour of his father, was fraudulent and collusive, having been obtained when appellant was minor and without proper representation through a court-appointed guardian - It was further asserted that, taking advantage of said decree, defendants attempted to interfere with appellant's lawful possession and alienate portions of property - Defendants denied these allegations, asserting that ex parte decree was valid, conclusive and operated as res judicata between the parties - Trial court dismissed plaintiff's suit, upholding binding nature of 1999 decree, leading appellant to prefer the instant First Appeal u/s 96 C.P.C., challenging validity of decree on grounds

of fraud, non-representation and lack of jurisdiction.

Held: Previously Mangal Sen Chhabra and subsequently, plaintiff is the true owner of disputed house - It is also apparent that regarding eviction of tenants from disputed house, Rent Control Appeal is pending - It is also apparent that tenants Samson William and Morris William are residing in property, who have allegedly handed over vacant possession of tenanted accommodation to defendants who are not true owner's of disputed house - Tenants were bound to handover vacant possession of tenanted accommodation to their landlord or true owner of disputed house - In such circumstances, it will be deemed that plaintiff is in lawful possession of disputed house, through tenants, who is entitled to relief of permanent injunction against defendants - In these circumstances, trial court erred in concluding that plaintiff 's suit was barred by s. 34, 38 and 41(h) of Specific Relief Act - Plaintiff is the true owner of disputed house - Defendants had no concern with this property, but they had illegally executed several sale deeds on 15.5.2006, which were registered on 20.7.2006, in favour of other defendants in suit, which are void ab-initio, which are not binding on plaintiff - The plaintiff has claimed that by declaratory decree of court, sale deeds executed by defendants in favour of other defendants be declared null and void, not binding on plaintiff and further, defendants be restrained from interfering, alienating, demolishing, constructing or transferring the disputed property - Trial court erred in dismissing plaintiff 's suit for declaration and permanent injunction - Accordingly, both the appeals allowed. [Paras 116, 124] (E-13)

Case Law Cited

R. Unnikrishnan and another v. V.K.Mahanudevan and others, **(2014)4 SCC 434;** Vaijinath v. Afsar Begum, **(2020) 15 SCC 128;** Baldev Singh v. Surinder Mohan Sharma and others, **(2003) 1 SCC 34;** Kameshwari Devi (SMT) alias Kaleshwari Devi and others v. Barhani (SMT) dead by LRS. and others, **(1997)10 SCC 273;** Asharfi Lal v. Smt.Koili (Dead) through Lrs, **(1995) 4 SCC 163 (by 3 Judges);** Ramesh B.Desai and others v. Bipin Vadilal Mehta and others, **(2006)5 SCC 638;** Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and others, **(2008)4 SCC 594;** S.K.Sattar Sk. Mohd.Choudhari v. Gundappa Amabadas Bukate, **AIR 1997 SC 998;** Hussain Ahmed Choudhury & Ors. v. Habibur Rahman(Dead) through Lrs. & Ors. , **2025 SCC Online SC 892** - **referred to**

Pushpalata v. Vijay Kumar(dead) through Lrs. and others, **2022 SCC OnLine SC 1152;** Mohammade Yusuf and others v. Raj Kumar and others, **(2020)10 SCC 264** - **relied on**

Venkataraja & others v. Vidyane Doureradjaperumal, **(2014) 14 SCC 502;** Vasantha (Dead) through LR v. Rajalakshmi@ Rajam(Dead) through Lrs, **2024 INSC 109;** Mallavva and another v. Kalsammanavara Kalamma (Since Dead) by Lrs and others, **2024 INSC 1021;** Rajeev Gupta and others v. Prashant Garg and others, **2025 INSC 552 - distinguished**

List of Acts

Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972; Specific Relief Act, 1963; Code of Civil Procedure, 1908; Limitation Act, 1963; Guardian and Wards Act, 1890.

List of Keywords

First Appeal u/s 96 C.P.C.; Ex parte decree; Declaratory relief; Permanent injunction; Ownership and possession; Bungalow No. 329, Jhokan Bagh, Jhansi; Collusive decree; Fraudulent decree; Joint Hindu family property; Minor not duly represented; Guardian ad litem; Void and illegal document; Orally partitioned; Registered sale deed; Challenge to validity of decree; Jurisdiction of Civil Court; Legal heirs; Res judicata u/s 11 C.P.C.; Binding effect and finality of decree; Bar of subsequent suit; Fraud vitiates proceedings; Misrepresentation and suppression of facts; Material illegality; Jurisdictional error; Unsustainable in the eye of law; Setting aside of decree; Restoration of suit; Original record to be transmitted to trial court.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 60 of 2011 Connected with First Appeal No. - 70 of 2011

From the Judgment and Decree dated 9.12.2010 passed by the Court of Sri. Rajat Singh Jain, Additional District Judge/Special Judge (EC Act), Jhansi in O.S. no. 129 of 2005.

Appearances for Parties

Advs. for the Appellant:
K.K. Tiwari, Rishikesh Tripathi

Advs. for the Respondent:
Arvind Srivastava, Ashish Kumar Singh, Hari Manish Bahadur Sinha, Jitendra Kumar Srivastava, Pushkar Srivastava, Ram Dayal Tiwari, Udayan Nandan

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

1. First Appeal no. 60 of 2011 has been filed by the plaintiff – appellant against judgment and decree dated 9.12.2010 passed by the court of **Sri. Rajat Singh Jain,** Additional District Judge/Special Judge(EC Act), Jhansi in O.S. no. 129 of 2005 Rajesh Chhabra versus Radhey Lal Jeswani and others, whereby the plaintiffs suit for the relief of declaration, for declaring void agreement to sell dated 20.4.2005, executed by defendant no.2 &3, in favour of defendant no.1, regarding bungalow no. 329, Jhokan Bagh, Jhansi and suit for the relief of permanent injunction, for restraining the defendants from demolishing, alienating, transferring, altering the above bungalow, has been rejected.

2. First appeal No. 70 of 2011 has been filed by the plaintiff – appellant against judgment and decree dated 9.12.2010 passed by the court of **Sri. Rajat Singh Jain,** Additional District Judge/Special Judge(EC Act), Jhansi in O.S. no. 365 of 2006 Rajesh Chhabra versus Radhey Lal Jeswani and others, whereby the plaintiffs suit for the relief of declaration, for declaring void registered sale deeds dated 15.05.2006 registered on 20.07.2006, executed by Smt.Savita Chhabra and Rishav Chhabra, in favour of defendant no.1,2,3,4&5, regarding bungalow no. 329, new no. 1358, Jhokan Bagh, Jhansi and suit for the relief of permanent injunction, for restraining the defendants from interfering, demolishing, alienating, transferring, altering the above bungalow, has been rejected.

3. Both the original suit no. 129 of 2005 and 365 of 2006 were consolidated by the trial court, and decided by the common judgment and decree dated 9.12.2010, aggrieved against which, the plaintiff – appellant has filed the above two appeals, which have been tagged and heard together and are being disposed by this common judgment.

Facts of O.S.no.129 of 2005

4. The suit was filed by the plaintiff – appellant with the averments that disputed house no. 329(old no.), new no. 967, present no.1358, Jhokan Bagh,Civil Lines, Jhansi was the property of Late Sardari Lal Chhabra, which was purchased by him in the name of his minor son Vinay Chhabra, in the year 1965. Vinay Chhabra died on 24.11.1987, leaving behind defendant no.2 his wife Smt. Savita Chhabra and defendant no.3 his son Rishav Chhabra, as his legal heirs.

5. It was averred by the plaintiff that when the disputed house was purchased by late Sardari Lal, then at that time mother of defendant no.4 and 5 Smt. H. William was the tenant in the disputed house, who has died, and after her death defendant no. 4 and 5 have become tenants in the disputed house.

6. It was averred by the plaintiff that since the properties left behind by late

Sardari Lal belonged to the joint Hindu family of his sons, as such, in the year 1980, a partition took place between the heirs of late Sardari Lal, in which, the disputed house devolved upon the father of the plaintiff Mangal Sen Chhabra. Since, some heirs of deceased Sardari Lal Chhabra, refused to accept the family partition, as such, the plaintiff 's father Mangal Sen Chhabra filed suit no. 28 of 1996 Mangal Sen Chhabra versus Ramjeet Chhabra and others, for the relief of declaration, before the court of Civil Judge(Senior Division), Jhansi in which the present defendants no.2&3, were arrayed as defendant no.6&7. Suit No. 28 of 1996 was decreed on 31.3.1999 in favour of paintiff's father Mangal Sen Chhabra and as such, he was declared the owner in possession of disputed house no. 329 and it was also made clear, that the other defendants had no right, title or interest in the disputed house.

7. It was averred by the plaintiff, that after suit no. 28 of 1996 was decreed, the defendants no.2&3(of this suit) filed miscellaneous application no.125 of 1999 under Order 9 Rule 13 CPC, which was also dismissed on merits on 27.7 2001, which was also challenged by the defendant no.2&3, by filing Miscellaneous Appeal No. 66 of 2001 before the court of Special Judge/SCC, Jhansi, which was also dismissed on 30.7.2004, and such, the decree passed in O.S. no. 28 of 1996 dated 31.3.1999 remained effective and the defendants no.2&3 were bound by that decree.

8. It was further averred by the plaintiff that, subsequently regarding disputed house no. 329, a family partition took place between his father Mangal Sen Chhabra and him in November, 1995, in which, house no. 329 came to his share, in which defendant no.4&5 were residing as tenants, who thereafter, became tenants of the plaintiff. The plaintiff was residing since, the year 1995 in house no. 292, Issai Tola,Khatibaba,Jhansi. It was further averred that in the decree passed in O.S. no. 539 of 2000 Mangal Sen Chhabra versus Rajesh Chhabra, by the court of Civil Judge(Jr Division) Jhansi, it was declared that the plaintiff was the owner of the disputed house no. 329, which has got no concern with plaintiff's father.

9. It was further averred by the plaintiff that since the disputed house was required by him for his residential needs, as such, he had filed P.A.case no.8 of 2002 Rajesh Chhabra versus Samson William under section 21 of the UP Act no. 13 of 1972, in the court of Prescribed Authority/Civil Judge(Jr Division), Jhansi against tenant/defendant no.4&5, which was pending for disposal.

10. It was further averred by the plaintiff that, his father Mangal Sen Chhabra, in the lifetime of defendant no.2&3's predecessor Vinay Chhabra, had filed P.A.Case No. 65 of 1986 under section 21 of UP Act. no. 13 of 1972 ,against defendant no.4&5, in which Late Vinay Chhabra had filed his affidavit dated 16.12.1986 in which, he had accepted the family partition and had further stated that the disputed house no. 329 belonged to plaintiff's father Mangal Sen Chhabra and Vinay Chhabra, had no concern with the disputed house.

11. It was further averred by the plaintiff that the above facts proved that, he was the undisputed owner and landlord of house no. 329 and, as such, defendant no.2 &3, had no concern with the disputed

bungalow. It was also averred that defendant no.1 very well knew that plaintiff was the owner of the disputed house and the defendant no.2&3 had no concern with the above house.

12. The plaintiff became aware that an agreement to sell dated 20.4.2005 was executed by defendant no.2&3 in favour of defendant no.1, in which he was not a party, a consideration of which was shown to be ₹ 22 lakhs ,which was a void document, because the defendant no. 2 and 3 had no right title and interest in the disputed house after the decree was passed in O.S. no. 28 of 1996. It was further alleged that the defendant no.4&5 were also indirectly involved in the above agreement to sell. It was further alleged that subsequently, many sale deeds were executed on 20.7.2006 in favour of defendant no. 6,7 and 8, which were null and void. With these submissions, the plaintiff sought the following reliefs from the court:-

(i) by decree of declaration granted in favour of the plaintiff against the defendants, it be declared that the agreement to sell dated 20.4.2005 executed by defendant no.2&3 in favour of defendant no.1, sale deed dated 20.7.2006 executed by defendant no.2&3 in favour of defendant no.1,6,7&8 are null and void, which do not affect the rights of the plaintiff in disputed house no. 329.

(ii) by decree of permanent injunction granted in favour of the plaintiff against the defendants, the defendants be restrained from demolishing the disputed bungalow no. 329, plotting it, alienating it, transferring it or interfering in the peaceful possession of the plaintiff.

Written Statement of defendant no.1&2

13. The defendant no.1 Radhey Lal Jeswani and defendant no.2 Smt.Savita Chhabra in their joint written statement accepted that Vinay Chhabra died on 24.11.1987, leaving behind his wife Savita Chhabra and son/defendant no.3 Rishav Chhabra. It was specifically averred that the plaintiff was never the owner and landlord of the disputed house no. 329 as such, the plaintiff had no cause of action to file the instant suit. It was further averred that previously for getting the disputed house vacated, the plaintiff had filed SCC suit no. 118 of 1996 Rajesh Chhabra and Mangal Sen Chhabra versus Samson William and others in the Court of Judge Small Causes, Jhansi, which was contested by defendant no.1&2, the suit was dismissed on 16.8.2003, in which the plaintiff was not accepted as the landlord of the disputed house. It was also held by the court that there was no relationship of landlord and tenant between Rajesh Chhabra/ Mangal Sen Chhabra and Samson William/Morris William.

14. It was further averred that the disputed house was purchased by Vinay Chhabra through his father, by a registered sale deed in the year 1965 and had also, obtained its possession. At that time, Vinay Chhabra was minor and after his death, his wife and son, became the owners in possession of the disputed house. It was further submitted that in case number 118 of 1996 Vinay Chhabra's wife and minor son had submitted their written statement, in which, they had alleged that Rajesh Chhabra and Mangal Sen Chhabra had no right to institute suit number 118 of 1996 because, they were neither the owner nor landlords.

15. It was further submitted that the disputed house was purchased by late Sardari Lal for the benefit of his minor son Vinay Chhabra, by registered sale deed executed in the year 1965. It was further alleged that recently Rishav Chhabra had attained majority. Smt. H. William was the tenant of Vinay Chhabra, and after her death, defendant no.4&5 became tenants in the disputed house, who had handed over the possession of the tenanted accommodation to the defendant no.2&3, prior to the filing of the suit, as such, defendant no.2&3 were the owners in possession of the disputed house.

16. It was specifically denied that the disputed property, was the property of the joint Hindu family of Sardari Lal. It was also denied that a family partition took place in the year 1980 between the legal heirs of late Sardari Lal, in which the property devolved on Mangal Sen Chhabra. It was further alleged that in suit no. 28 of 1996, title of the disputed property could not have been adjudicated, as such, the decree passed in that suit was null and void, which was not binding on defendant no.2&3, the decree was also not registered, as such,it had no legal effect. It was further alleged that the decree in suit no. 28 of 1996 was passed against minor defendant no.3, which was not for his benefit, as such, the defendant no.2&3, were not bound by the decree dated 31.3.1999.

17. It was further averred by them that the High Court in its order dated 31.7.1995 had not accepted plaintiff 's father Mangal Sen Chhabra, as the owner of the disputed house and due to this finding, Mangal Sen Chhabra's release application under section 21 of the UP Act no. 13 of 1972, was rejected. The High Court also did not accept in its above order, the alleged consent of the brothers. It was also alleged that the defendants were not bound by the decree passed in O.S. No. 539 of 2000 Mangal Sen Chhabra versus Rajesh Chhabra, by the court of Civil Judge(Jr Division), Jhansi because it was a collusive decree. Further, Mangal Sen Chhabra was not the owner of the disputed house as such, no question arises of Rajesh Chhabra being the owner of the disputed house . The alleged partition that took place in the year 1995, between Rajesh Chhabra and Mangal Sen Chhabra, was illegal and fraudulent, which was void. It was further averred that P.A. case no.8 of 2002 Rajesh Chhabra versus Samson William and others, under section 21 of the UP Act no. 13 of 1972, was pending. In P.A. case no. 65 of 1986, no affidavit was sworn by late Vinay Chhabra in favour of Mangal Sen Chhabra on 16.12.1986, the affidavit submitted by Mangal Sen Chhabra was fraudulent which was evident from the order dated 31.7.1995 passed by the High Court. The defendants accepted that agreement to sell dated 20.4.2005 was executed by defendant no.2&3 in favour of defendant no.1, for a consideration of ₹ 2 Lacs, which was a valid document. It was denied that any sale deed regarding the disputed house was executed by them on 20.4.2005. It was further alleged that the plaintiff had no cause of action to file the present suit. The suit was barred by section 34, 38 and 41(h) of the Specific Relief Act, the suit was undervalued and the court fees paid was insufficient, the plaintiff was bound by the decree dated 16.8.2003 passed by the court of JSCC,Jhansi in case no. 118 of 1996 Rajesh Chhabra and Mangal Sen Chhabra versus Samson William and others. With these submissions it was prayed that the plaintiffs suit be dismissed.

Written Statement of defendants no.6 to 9

18. It was accepted by the defendants that the disputed house was purchased in

the name of minor Vinay Chhabra, by his father, late Sardari Lal Chhabra by sale deed dated 12.1.1965 and after the death of Vinay Chhabra, defendant no.2&3 being the legal heirs of Vinay Chhabra, became the owners in possession of the disputed house. It was also alleged that in the year 1965 Smt. H. William was the tenant in the disputed house, and after her death, her sons defendant no.4&5 became tenants in the disputed house. It was further alleged that the declaratory decree passed in suit no. 28 of 1996 was null and void, which was not binding on defendant no.2&3. It was also alleged that regarding disputed house, in proceedings under section 21 of UP Act no. 13 of 1972, which was filed by Mangal Sen Chhabra against Smt. H. William and her legal heirs,was challenged in Civil Misc. Writ Petition no. 2387 of 1990 Smt. H. William versus First Additional District Judge Jhansi, which was decided by the High Court on 31.7.1995, in which, it was not accepted that a family partition took place in the year 1980 between the parties. It was also held that Mangal Sen Chhabra was not the owner in possession of the disputed house.

19. It was further averred that the plaintiff never remained the exclusive owner in possession of the disputed house, which was never given to the plaintiff, in the family partition that took place between the plaintiff and his father Mangal Sen Chhabra. The decree passed in original suit no. 539 of 2000 Mangal Sen Chhabra versus Rajesh Chhabra, was a collusive decree, on the basis of which no right title and interest in the disputed house had devolved on the plaintiff and also, the defendants were not bound by the decree passed in that suit. It was further alleged that no affidavit was sworn in by late Vinay Chhabra in favour of Mangal Sen Chhabra in P.A. case no. 65 of 1986, and on the basis of the alleged affidavit, ownership rights in the disputed house had not devolved on the plaintiff and his predecessors. It was accepted by them that regarding the disputed house several legal sale deeds were executed on 15.5.2006, by defendant no.2&3 in favour of defendant no.1, 6,7,8 & 9. With these submissions, it was prayed that the plaintiff's suit be dismissed.

20. On the basis of the pleadings of the parties, the following issues were framed by the trial court:-

(i) Whether on the basis of grounds mentioned in the plaint the agreement to sell dated 20.4.2005 and four sale deeds dated 15.5.2006 were liable to be declared null and void?

(ii) Whether the plaintiff was owner in possession of bungalow no. 329,Jhokan Bagh, Jhansi on the basis of grounds mentioned in the plaint?

(iii) Whether the suit was undervalued and the court fee paid was insufficient?

(iv) Whether the suit was barred by sections 34, 38 and 41(h) of the Specific Relief Act?

(v) Whether the proceedings of the suit was liable to be stayed under section 10 of CPC as alleged in para 34 of WS 133A –1 ?

(vi)Whether the plaintiff was entitled to any relief, if any?

O.S.No 365 of 2006

21. This suit was filed by the plaintiff with almost the same averments that were made in O.S. no.129 of 2005 by him. It was averred by the plaintiff that previously he had filed O.S. no. 129 of 2005 for getting declared the agreement to sell dated 20.4.2005, executed by the legal heirs of late Vinay Chhabra, in favour of defendant no.1, null and void, but, subsequently the legal heirs of late Vinay Chhabra, had executed 4 sale deeds on 15.05.2006 registered on 20.7.2006 in favour of defendant no.2,3,4 & 5, which were null and void.

22. It was also averred that previously in SCC Revision No. 67 of 2003 Rajesh Chhabra versus Samson William, the plaintiff was held to be the owner and landlord of the disputed house. The plaintiff sought the following reliefs:-

(i) by declaratory decree granted in favour of the plaintiff against the defendants, the registered sale deeds executed by Smt. Savita Chhabra and Rishav Chhabra in favour of defendant no.1,2,3,4 & 5 executed on 15.05.2006 registered on 20.7.2006, regarding the disputed house, be declared null and void.

(ii) by decree of permanent injunction granted in favour of the plaintiff against the defendants, the defendants be restrained from interfering in the peaceful possession and vested rights as landlord, in disputed house no. 329, new no. 1358,Jhokan Bagh,Jhansi.

Written Statement of defendants

23. It was accepted by the defendants that the disputed house was purchased wayback in the year 1965 by Sardari Lal, in the name of his son Vinay Chhabra, and after the death of Vinay Chhabra on 24.11.1987, the ownership of the house devolved on his legal heirs, his wife Smt.Savita Chhabra and son Rishav Chhabra. It was also accepted that in the disputed house Smt. H. William was a tenant and after her death, her legal heirs became tenant's in the disputed house. It was also alleged that against the decision dated 23.12.2005 in SCC Revision No. 67 of 2003 Rajesh Chhabra and another versus Samson William and others, passed by the court of First Additional District Judge Jhansi, Writ Petition had been filed in the High Court, which was pending for disposal. It was also accepted that through 4 sale deeds dated 20.7.2006, the defendants purchased the disputed house and were in possession of the disputed house.

24. It was also averred by the defendants that the plaintiff never remained the owner in possession of the disputed house.Also, Smt. H. William never remained tenant of plaintiff or his father Mangal Sen Chhabra. It was also averred that after the death of Smt. H. William, her sons Samson William and Morris William never remained tenant of Mangal Sen Chhabra and Rajesh Chhabra, and Mangal Sen Chhabra and Rajesh Chhabra were neither accepted as landlords by Morris William and Samson William nor any rent was paid by them, to Rajesh Chhabra and Mangal Sen Chhabra. It was further alleged that the plaintiff was not in possession of the disputed house, instead, the defendants were the owner in possession. The plaintiff had not claimed the relief of possession, hence plaintiff's suit was barred by section 34, 38 and 41(h) of the Specific Relief Act. The plaintiff had not claimed the relief of cancellation of the sale deeds dated

20.7.2006 as such, by declaratory decree the above sale deeds cannot be cancelled. Since, the plaintiff was not in possession of the disputed house as such, the relief of permanent injunction was barred by section 38 of the Specific Relief Act. It was also alleged that on 19.4.2005, the alleged tenants Samson William and Morris William, handed over the possession of the tenanted accommodation to Smt.Savita Chhabra and Rishav Chhabra, and till 19.7.2006, Savita Chhabra and Rishav Chhabra remained the owner in possession of the disputed house and subsequently, on 20.7.2006, the disputed house was sold through four sale deeds to the defendants, and now the defendants were in possession of the disputed house. With these submissions, it was prayed that the plaintiff 's suit be dismissed.

25. On the basis of the pleadings of the parties, the following issues were framed, in this suit:-

(i) Whether the plaintiff was owner in possession of suit property?

(ii)Whether the sale deeds executed on 15.05.2006 registered on 20.7.2006 by Smt. Savita Chhabra and Rishav Chhabra in favour of defendant no.1 Radhey Lal Jeswani, defendant no.2 Sanjay Agarwal, defendant no.3 Smt. Hema Agarwal, defendant no.4 Sunil Kumar, and defendant no.5 Mahendra Kumar, were liable to be declared null, void and ineffective on the basis of grounds mentioned in the plaint?

(iii)Whether any cause of action arose to the plaintiff against the defendants?

(iv)Whether the suit was undervalued and the court fee paid was insufficient?

(v)Whether the suit was barred by sections 34, 38 and 41(h) of the Specific Relief Act?

(vi)To what relief, if any, the plaintiff was entitled to?

26. The trial court by order dated 3.3.2008, consolidated both the above suits and for the purpose of evidence, O.S. no.129 of 2005 was made leading case, in which evidence was recorded.

27. In oral evidence, the plaintiff Rajesh Chhabra examined himself as PW-1 and his father, Mangal Sen Chhabra as PW-2. The defendants examined Sanjay Agarwal as DW-1.

28. In documentary evidence, the plaintiff filed copy of plaint in O.S. no. 28 of 1996, certified copy of ex-parte judgment dated 31.3.1999 in the above suit, copy of order in Miscellaneous Case no. 125 of 1999 dated 27.7.2001, copy of memo of appeal in Miscellaneous Civil Appeal No. 66 of 2001, order dated 30.7.2004, copy of judgment dated 17.8.2002 in O.S. no. 539 of 2000 Mangal Sen Chhabra versus Rajesh Chhabra, certified copy of affidavit of Vinay Chhabra in P.A.case no. 65 of 1986, certified copy of agreement to sell dated 20.4.2005 executed by Smt. Savita Chhabra and Rishav Chhabra in favour of Radhey Lal Jeswani, defendant no.1, copy of Miscellaneous Case no.115 of 1990 under section 39 of Guardians and Wards Act by Smt.Savita Chhabra, certified copy of the statement of Balram Chhabra in SCC suit no.118 of 1996, certified copy of order dated 27.10.2005 in P.A.case no.8 of 2002 Rajesh Chhabra versus Samson William and others, judgment in SCCR no. 67 of 2003 Rajesh Chhabra and another versus

Samson William and others, certified copy of sale deed dated 12.1.1965 regarding the suit property purchased in the name of Vinay Chhabra, memo of appeal in RCA No. 22 of 2007 Rajesh Chhabra and another versus Samson William and others, certified copy of order dated 10.9.2007 in O.S. no.129 of 2005, certified copy of 4 sale deeds dated 15.5.2006, photocopy of plaint of O.S. no.301 of 2006 Rishav Chhabra versus Mangal Sen Chhabra and others dated 29.07.2006 and photocopy of order dated 20.04.2010 passed by the High Court in Writ A no.20677 of 2006 Rishav Chhabra and another versus Rajesh Chhabra and others.

29. The defendants filed in documentary evidence, receipt of house tax in the name of Sanjay and Smt.Hema, receipt of house tax in the name of Sunil Kumar and Mahendra Kumar, photocopy of electricity bill, photographs of the disputed property, copy of judgment dated 11.5.2007 in P.A. case no.8 of 2002 Rajesh Chhabra versus Samson William, certified copy of sale deed dated 15.5.2006, executed by defendant no.2 & 3 in favour of defendant no.1, certified copy of sale deeds dated 15.5.2006 executed by defendant no.2 & 3 in favour of Sanjay Agarwal, his wife Smt.Hema Agarwal, Sunil and Mahendra Kumar, photostat copy of judgment of SCC suit no.118 of 1996, copy of judgment in Writ petition no. 2387 of 1990, copy of order passed in Writ A no. 20677 of 2006, certified copy of sale deeds dated 15.5.2006 and certified copy of judgment in P.A. case no.8 of 2002 Rajesh Chhabra versus Samson William.

Findings of the trial court

• ***Issue no.1 in O.S.no.129 of 2005 and Issue no.2 in O.S. no. 365 of 2006***

30. Both the issues were decided jointly. The trial court came to the conclusion that the findings in P.A. cases could not be held binding because, these cases were decided by the court of Prescribed Authority under UP Act no. 13 of 1972, which was a court of limited jurisdiction. The trial court came to the conclusion that the finding recorded in these cases would not act as res-judicata, on a title suit, decided by a regular civil court.

31. The trial court noted that in O.S. no. 28 of 1996, which was filed by the legal heirs of late Sardari Lal, the legal heirs of late Vinay Chhabra, who died in an accident on 24.11.1987, namely Rishav Chhabra and Savita Chhabra were impleaded as defendant no.6 & 7, who had started claiming ownership in the disputed property, as such, a declaration was sought by Mangal Sen Chhabra, regarding his ownership and possession of the disputed property. The trial court also noted that when the above suit was filed, defendant no.3 Rishav Chhabra was only eight years old, who was minor, the service on defendants was effected by publication in newspaper, when none appeared, one Advocate Bharat Jain, was appointed as guardian- ad- litem of the minor defendant, but he did not take any step to safeguard the interest of the minor and ultimately, the suit was proceeded ex-parte against minor on 28.10.1997. The trial court noted that the above suit was decreed ex-parte on 31.3.1999, in which the plaintiff was declared to be the exclusive owner in possession of house no. 329, situated in Civil Lines,Jhansi and it was also declared

that, the defendants do not have any right or share therein.

32. The trial court also noted that the defendant no. 2 & 3, after becoming aware that suit no. 28 of 1996 was decreed ex-parte against them, had moved an application under Order 9 Rule 13 CPC, in which a plea was raised by them, that the ex-parte decree was collusive, which was against the interest of the minor, because no service was effected on the defendants, the Advocate had not safeguarded the interests of the minor. The trial court noted that the restoration application was dismissed by the court of Civil Judge(Senior Division), Jhansi by order dated 27.7.2001, against which MCA no. 66 of 2001 was filed, which was also dismissed in default on 30.7 2004.

33. The trial court concluded that since minor defendant no.3 was not properly represented in O.S. no. 28 of 1996, the decree passed in that suit was fraudulent and collusive, which was not binding on defendant no.3 and further, it would not operate as res-judicata. The trial court also concluded that there was no necessity on the part of minor defendant, to file a separate suit, on attaining majority, for challenging the fraudulent and collusive decree passed in the above suit. It was also concluded by the trial court that, since the plaintiff in the above suit, was not having any subsisting ownership rights therefore, the decree passed in the above suit required registration.

34. The trial court concluded that disputed house was purchased by late Sardari Lal in the name of minor Vinay Chhabra. It was also concluded that in the affidavit filed by Vinay Chhabra, there was no admission of ownership of the plaintiff 's father. The trial court also disbelieved the version of the plaintiff that, in the year 1980, family partition took place between the legal heirs of late Sardari Lal. The trial court also concluded that, the disputed house was not a joint Hindu family property. The trial court finally concluded that the plaintiff failed to prove that he was the exclusive owner in possession of the suit property and as such, both the issues, were decided in negative.

• ***Issue no.2 in O.S. no.129 of 2005 and issue no.1 in O.S. no. 365 of 2005***

35. Both these issues were decided jointly, by the trial court. The trial court concluded that the sale deeds and agreement to sell in question, could not be declared null and void, because it was mentioned in the deeds, that consideration was paid to the vendor's by the vendee's.

• ***Issue no.3 & 4 in O.S. no. 365 of 2006***

36. The trial court decided these issues in favour of the plaintiff by concluding that the plaintiff was having cause of action to file the suit. The trial court also concluded that the plaintiff had correctly valued the suit and the court fee paid was sufficient.

• ***Issue no 4 in O.S. no. 129 of 2005 and issue no. 5 in O.S.no. 365 of 2006***

37. The trial court decided both the issues jointly. The trial court concluded that since the plaintiff was out of possession of the disputed house, he should have claimed possession, but the plaintiff had only claimed declaration, without claiming possession, which was barred by section 34

and 41(h) of the Specific Relief Act. It was also held that in such circumstances, no injunction could be granted being barred by section 38 of the Specific Relief Act.

• ***Issue no.6 in both the suits***

38. The trial court decided both the issues jointly. It was held that the plaintiff failed to prove that partition took place in the year 1980, between his father and his uncles. Further, he could not prove his exclusive ownership over the suit property and since, admittedly he was out of possession of the suit property, the plaintiff was held not entitled to any relief in both the suits. With this reasoning, both the suits of the plaintiff were dismissed.

39. Aggrieved against the dismissal of both the above mentioned suits, the plaintiff – appellant has filed two separate First Appeals 60 of 2011 and 70 of 2011, before this Court.

40. Learned counsel for the plaintiff-appellant submitted that Vinay Chhabra was only eight years old, in the year 1965, when his father Sardari Lal had purchased the property in his name, out of the funds of the joint Hindu family. Learned counsel submitted that since Vinay Chhabra was minor at that time, he was not having any independent income, as such, the whole consideration of the sale deed, was paid by Sardari Lal. Learned counsel submitted that Sardari Lal died in the year 1973, leaving behind his seven sons. Sardari Lal also left substantial property of the joint Hindu family, which was subsequently, orally partitioned among his heirs ,in the year 1980.

41. Learned counsel further submitted that in the year 1980, Vinay Chhabra had attained majority, who was also a party to the above partition, which was also accepted by him, by filing his affidavit in a subsequent eviction case, filed against the tenants, by plaintiffs father. Learned counsel further submitted that on 24.11.1987, Vinay Chhabra died in an accident, leaving behind his wife Smt. Savita Chhabra and minor son Rishav Chhabra. Learned counsel submitted that during his lifetime, Vinay Chhabra never disputed the partition, but after his death, his legal heirs raised a dispute, as such, the plaintiffs father Mangal Sen Chhabra filed suit no. 28 of 1996, before the competent civil court, for the relief of declaration of the ownership and possession of the disputed house no. 329, in which the defendant no. 2 & 3 of O.S. no.129 of 2005, were also arrayed as defendants no. 6&7, that suit was decreed on 31.3.1999.

42. Learned counsel further submitted that in suit no. 28 of 1996, the issue of ownership and possession of disputed house no. 329, was directly in issue, which was decided in favour of the plaintiff 's father Mangal Sen Chhabra, as such, that issue cannot be re-agitated in a subsequent proceeding, between the parties or their successors. Learned counsel further submitted that even if, the ex-parte decree passed in the above suit was held to be collusive and illegal, even then, it would operate as res-judicata between the parties, but, the trial court has erred in not treating the above decree as binding, in the facts and circumstances of the case. Learned counsel further submitted that an application under Order 9 Rule 13 CPC was filed by the defendant no.2 & 3, for setting aside the ex-parte decree in suit no. 28 of 1996, which was dismissed on merits, against which a Miscellaneous Civil Appeal was also filed by the defendants,

which was also dismissed in default, as such, the decree passed in suit no. 28 of 1996 has attained finality, which would operate as res-judicata, insofar, as the title and ownership of the disputed house was concerned. Learned counsel further submitted that the above decree conclusively proved that the disputed house was property of joint Hindu family, regarding which an oral partition took place between the members of the joint Hindu family, which was accepted and acted upon by the members of the family and in accordance with the above partition, the disputed house came in the share of the plaintiffs father Mangal Sen Chhabra. Learned counsel further submitted that on the basis of subsequent partition, which took place between the plaintiff and his father, the plaintiff was the owner in possession of the disputed house.

43. Learned counsel further submitted that even if, it is assumed that, in suit no. 28 of 1996, guardian ad-litem, appointed by the court, failed to protect the interest of minor defendant, the defendant had the remedy of filing a suit, on attaining majority, to challenge the ex-parte decree passed in the above suit, and the minor defendant had availed that opportunity on attaining majority, by filing O.S. no.301 of 2006 Rishav Chhabra versus Mangal Sen Chhabra and others in the court of Civil Judge(Senior Division), Jhansi, which was dismissed in default on 7.12.2015 as such, the ex-parte decree passed in O.S. no. 28 of 1996, has attained finality, which cannot be challenged on any ground whatsoever and as such, the trial court could not have examined the ex-parte decree in O.S. no.28 of 1996, but the trial court exceeded its jurisdiction and went on to consider the legality of the decree passed in the above suit.

44. Learned counsel further submitted that the partition took place between the legal heirs of late Sardari Lal in the year 1980, which was accepted by all the heirs, otherwise, litigation would have ensued between the heirs. Learned counsel submitted that in the instant case, the dispute has not been raised by Vinay Chhabra, but by his legal heirs.

45. Learned counsel further submitted that when the house was purchased in the year 1965, even at that time Smt. H. William was the tenant, and after her death, her two sons Samson William and Morris William, inherited the tenancy, who remained in possession of the tenanted accommodation till, it was purchased by defendants by sale deed dated 15.5.2006. Learned counsel submitted that since, the tenants were inducted by the predecessors of the plaintiff, they were bound to hand the vacant and physical possession of the tenanted accommodation to the plaintiff, as such, the possession of the defendants is illegal. Learned counsel further submitted that since the tenants were in possession of the disputed house, it will amount to constructive/legal possession of the plaintiff, as such, the trial court erred in concluding that the plaintiff was not in possession of the disputed house and the suit was barred by section 34, 38 and 41(h) of the Specific Relief Act. Learned counsel further submitted that it was not disputed by the parties that defendant no.4 & 5 in O.S. no. 129 of 2005 were tenants in the disputed house. With these submissions, it was prayed that both the appeals be allowed and consequently, both the suits of the plaintiff be decreed.

46. Per contra, learned counsel for defendant – respondents submitted that the plaintiff failed to prove that the disputed

house was a joint Hindu family property. Learned counsel submitted that the disputed house was purchased for the benefit and in the name of minor Vinay Chhabra, as such, after his death, his heirs became owners in possession of the disputed house, and in this capacity, they had executed the sale deeds on 15.5.2006 in favour of the defendants, which were perfectly legal. Learned counsel further submitted that the ex-parte decree in suit no. 28 of 1996, was a fraudulent and collusive decree, in which notices on the defendants were sent on wrong address as such, they never became aware of the suit and as such, could not appear before the trial court. Further, the interest of minor Rishav Chhabra was not protected by the court, also the guardian ad-litem appointed by the court, failed to protect the interest of the minor defendant, who was in collusion with the plaintiff of that suit as such, the decree passed in that suit was not binding on the minor, and the validity of the decree could be challenged, wherever, that decree was enforced against the minor defendant. Learned counsel further submitted that plaintiff failed to prove that the disputed house was the property of the joint Hindu family. The plaintiff also failed to prove that regarding the disputed property, a partition took place between the heirs of late Sardari Lal, as such, the disputed house never devolved upon the predecessor of plaintiff, as such, the plaintiff never acquired the ownership of that house, and in view of these facts, the plaintiff was not entitled to get any relief from the court regarding the disputed house. Learned counsel further submitted that in these facts and circumstances, the trial court had not committed any illegality in dismissing both the suits of the plaintiff.With these submissions, it was prayed that both the appeals are meritless and be dismissed.

47. I've heard the learned counsel of both the parties, perused the record and case laws submitted by them.

48. On the basis of the pleadings, evidence adduced in the suits and arguments of the learned counsel of the parties, the following issues arise for determination in these appeals:-

(1)Whether the decree passed in O.S.no. 28 of 1996 operates as res-judicata, insofar, the title and possession of the disputed house is concerned?

(2)Whether the decree passed in O.S.no. 28 of 1996, can be challenged, in these proceedings, on the ground that the decree is fraudulent,collusive and is against the interest of minor defendant, who was not properly represented in that suit ?

(3) What is the effect of O.S. no.301 of 2006 filed by the minor defendant Rishav Chhabra, on attaining majority, for declaring the ex-parte decree dated 31.03.1999 passed in O.S. no.28 of 1996 null and void, which was dismissed in default on 7.12.2015 ?

(4)Whether the disputed house was one of the properties of the joint Hindu family of late Sardari Lal Chhabra, which was orally partitioned among his heirs in the year 1980, after the death of Sardari Lal Chhabra?

(5)Whether the disputed house was the benami property of late Sardari Lal Chhabra?

(6)Whether the decree passed in O.S.no. 28 of 1996 required registration?

(7)Whether Samson William and Morris William are the tenants in the disputed house, who had inherited tenancy from their late mother Smt. H. William?

(8)Whether the possession of the tenants, is to be considered as constructive/lawful possession of the plaintiff, insofar as the disputed house is concerned ?

(9)Whether the court erred in declaring in O.S. No. 28 of 1996 Mangal Sen Chhabra the owner in possession of the disputed house, because prior to the filing of the suit, in the year 1995 itself, in the alleged family partition between him and his son Rajesh Chhabra, the disputed house had already devolved on his son Rajesh Chhabra?

(10)Whether the plaintiff 's suit is barred by section 34, 38 and 41(h) of the Specific Relief Act?

(11)What relief the plaintiff is entitled to get?

Pleadings of O.S.no. 28 of 1996, issues arising in that suit, findings recorded by the court ,while decreeing the suit ex-parte on 31.3.1999

49. The plaintiff Mangal Sen Chhabra had filed the above O.S. no.28 of 1996 with the averments that his father late Sardari Lal Chhabra had seven sons. In this suit the plaintiff had impleaded the legal heirs of deceased Vinay Chhabra as defendant no. 6 Rishav Chhabra and defendant no.7 Smt.Savita Chhabra. The plaintiff averred in that suit that during his lifetime, Sardari Lal had solemnised two marriages, from first marriage a son named Shyam and daughter named Shashi were born and from the second wife, plaintiff and defendants were born. Since the relations between plaintiff and Shyam were not cordial, as such Sardari Lal in the year 1962, willingly separated Shyam after giving him his share. In view of this, after the death of Sardari Lal, no property devolved on Shyam. The plaintiffs father Sardari Lal died on 5.8.1973, and after his death, the property which was purchased in different names, was in joint possession of the plaintiff and the defendants. The disputed bungalow no. 329 was purchased by Sardari Lal, during his lifetime in the name of defendant no. 6 's father Vinay Chhabra, who was minor at that time. According to plaintiff, after the death of Sardari Lal, a partition took place between the plaintiff and the defendant's in the month of January 1980, in which the disputed bungalow no. 329, including the tenants, came to the share of plaintiff and thereafter, the plaintiff realised the rent from the tenant Smt. H. William. The plaintiff specifically averred that the partition was acted upon and as such, after the partition, all the defendants came into the possession of their respective properties, devolved in partition. The plaintiff also averred that regarding the disputed bungalow no. 329, a partition took place between him and his son Rajesh in the year 1995, in which the disputed bungalow was given by the plaintiff to his son Rajesh. The defendant no.6's father Vinay Chhabra died in an accident on 24.11.1987, leaving behind his legal heirs as defendant no.6 and 7. The plaintiff specifically pleaded that the defendant no.6 and 7 were well aware that the partition had been effected between the plaintiff and the defendants in the year 1980 but even then, the defendant no.6 and 7 began to assert their ownership rights in the disputed bungalow no. 329 on the basis of the alleged sale deed executed in favour of

their predecessor Vinay Chhabra. The plaintiff also averred that regarding the disputed bungalow, the defendant no.6 and 7 had got published a public notice in the newspaper Dainik Jagran on 3.1.1996, then the plaintiff felt the need for obtaining declaration regarding the disputed property. The plaintiff had impleaded his brothers as defendant number 1 to 5 in the suit, because they were also parties to the partition. The plaintiff prayed that by decree of the court he be declared the sole owner in possession of disputed bungalow no. 329, civil lines, Jhansi and further, the defendants have got no right title interest in this bungalow.

50. In the above suit, summons were sent to the defendants and thereafter, publication was also effected in the newspaper but none of the defendants appeared, as such by order dated 15.5.1996 the proceedings of the suit were proceeded ex-parte against defendant no.1 to 5 & 7. The proceedings of the suit were proceeded ex-parte against minor defendant no.6 Rishav Chhabra on 28.10.1997. In support of his pleadings, the plaintiff produced the certified copy of the affidavit of Vinay Chhabra filed in P.A. case no. 65 of 1986, Mangal Sen Chhabra versus H. William and the certified copy of order dated 18.4.1992 of the court of District Judge, Jhansi passed in Miscellaneous Case no. 115 of 1990 Smt. Savita Chhabra versus Ramjeet Chhabra. The plaintiff also filed his affidavit in oral evidence.

51. The trial court concluded that Vinay Chhabra had filed his affidavit in P.A. case no. 65 of 1986, Mangal Sen Chhabra versus H. William, in which he had accepted that the sale deed of disputed house no. 329, Jhokan Bagh, Jhansi was executed in his favour, but in partition, that property had devolved on his brother Mangal Sen Chhabra and as such, he had no right title and interest in that property. He acknowledged that Mangal Sen Chhabra was the sole owner of that property, who was entitled to realise the rent also. The trial court concluded that since the husband of defendant no.7 and the father of defendant no.6, had acknowledged in his lifetime, in the above affidavit, that the plaintiff was the sole owner of disputed house no. 329, as such the defendant no.6 and 7, who were the legal heirs of late Vinay Chhabra, had inherited the same right in the property, which devolved on Vinay Chhabra in that partition. The trial court also concluded that the declaration published by defendant no.7 in the newspaper, that she is entitled to realise the rent of disputed house no. 329, was without any legal right. The trial court also concluded that when the disputed property was purchased by Sardari Lal Chhabra, in the name of Vinay Chhabra, then at that time Vinay Chhabra was minor and after the death of Sardari Lal Chhabra, the properties left behind by him, came into the joint ownership of the plaintiff and the defendant's, regarding which a partition took place in the month of January 1980, in which the disputed house no. 329, civil lines Jhansi, came to the share and possession of the plaintiff along with the tenants, and thereafter, the plaintiff had also realised the rent from the tenants residing in that property. The trial court came to the conclusion that since no contrary evidence had been adduced by the defendants as such, there was no other alternative, but to believe the evidence adduced by the plaintiff. On the above reasoning, the trial Court decreed the suit ex-parte in favour of the plaintiff against the defendants, by declaring that the plaintiff was the sole owner in possession

of the disputed bungalow no. 329, civil lines, Jhansi in which the defendants had no right and share.

52. It is apparent that in O.S. no. 28 of 1996, the title and possession of the disputed house no. 329 was directly in issue between the parties to the suit, on which the trial court had recorded a definite finding that in the oral partition that took place in the year 1980, after the death of late Sardari Lal Chhabra, between the sons of Sardari Lal Chhabra, the disputed house had come to the share of the plaintiff, along with the tenants residing in that house, at that time. The trial court had declared the plaintiff Mangal Sen Chhabra to be the sole owner in possession of the disputed house no. 329 and had also declared that the defendants, had no right or share in the disputed house.

Subsequent proceedings initiated by Smt.Savita Chhabra and Rishav Chhabra for setting aside the ex-parte decree dated 31.3.99 passed in O.S. no. 28 of 1996

53. It is also apparent that after the passing of the ex-parte decree in O.S. no. 28 of 1996, Savita Chhabra and Vinay Chhabra, instituted in the court of Civil Judge (Senior Division) Jhansi, Miscellaneous Case no. 125 of 1999 Savita Chhabra and another versus Mangal Sen Chhabra under Order 9 Rule 13 CPC, for setting aside the above ex-parte decree, on the ground that the summons in the suit were not duly served, they had no knowledge of that suit, the plaintiff had fraudulently got the suit decreed ex-parte against them, their address mentioned in the plaint was wrong since they resided in Allahabad, they never received any summons. It was also averred by them that Rishav Chhabra was minor, his guardian ad-litem Bharat Jain, Advocate, had never contacted the minor defendant, who was in collusion with plaintiff Mangal Sen Chhabra.

54. Mangal Sen Chhabra objected to the above application by submitting that the applicants were fully aware of the proceedings of O.S. no. 28 of 1996 but they deliberately didn't appear in that suit. Bharat Jain, Advocate was duly appointed guardian ad litem by the court, who had duly protected the interest of the minor defendant and the application was time barred.

55. The trial court concluded that the application was time barred and further, there was no sufficient ground to recall the ex-parte decree, as such, the application under Order 9 Rule 13 CPC, was rejected vide order dated 27.7.2001.

56. The defendants Savita Chhabra and Rishav Chhabra carried the matter further, by challenging the above order dated 27.7.2001, by instituting Miscellaneous Civil Appeal no. 66 of 2001 Smt. Savita Chhabra vs. Mangal Sen Chhabra and others, which was dismissed for non prosecution on 30.7.2004 by the court of Additional District Judge/Special Judge SC/ST Act, Jhansi. The matter was not carried any further by the contesting defendants, as such, the decree dated 31.3.1999 passed in O.S. no. 28 of 1996, attained finality.

57. The Apex Court in the case of ***Baldev Singh vs. Surinder Mohan Sharma and others (2003) 1 SCC 34,*** held as under:-

"13. It is now a well-settled principle of law that an ex-parte decree is as good as a contesting decree unless it is set aside. An ex-parte decree can be set

aside by the court passing it or by an appellate court only at the instance of a person aggrieved thereby."

58. The Apex Court in the case of ***R. Unnikrishnan and another vs. V.K.Mahanudevan and others (2014)4 SCC 434,*** while considering the applicability of the principle of res-judicata, held as under;-

"19. It is trite that law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of the judgments pronounced by the courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of the Constitution Bench of this Court in Daryao v. State of U.P. [AIR 1961 SC 1457] where the Court succinctly summed up the law in the following words: (AIR p. 1462, paras 9 & 11)

"9. ... It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

* * *

11. ... The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis."

20. That even erroneous decisions can operate as res judicata is also fairly well settled by a long line of decisions rendered by this Court. In Mohanlal Goenka v. Benoy Kishna Mukherjee [(1952) 2 SCC 648 : AIR 1953 SC 65] this Court observed: (AIR p. 72, para 23)

"23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'."

21. Similarly, in State of W.B. v. Hemant Kumar Bhattacharjee [AIR 1966 SC 1061 : 1966 Cri LJ 805] this Court reiterated the above principles in the following words: (AIR p. 1066, para 14)

"14. ... A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

22. The recent decision of this Court in Kalinga Mining Corpn. v. Union of India [(2013) 5 SCC 252 : (2013) 2 SCC (Civ) 797] is a timely reminder of the very same principle. The following passage in this regard is apposite: (SCC pp. 267-68, para 44)

"44. ... In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of

competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision."

23. In Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy [(1970) 1 SCC 613] this Court held that for the application of the rule of res judicata, the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue if one purely of fact decided in the earlier proceedings by a competent court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be reopened. That is true even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only exception to the doctrine of res judicata is "fraud" that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any judgment, decree or order a nullity and non est in the eye of the law. In A.V. Papayya Sastry v. State of A.P. [(2007) 4 SCC 221] , "fraud" was defined by this Court in the following words: (SCC pp. 231-32, para 26)

"26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss [and cost] of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

24. To the same effect is the decision in Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar [(2008) 9 SCC 54 : (2008) 2 SCC (L&S) 802] , wherein this Court held: (SCC p. 70, para 32)

"32. (ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis thereof or otherwise."

59. The Apex Court in the case of ***Vaijinath vs. Afsar Begum (2020) 15 SCC 128,*** reiterated the principles of res-judicata enunciated earlier in the case of ***Unnikrishnan(supra)*** and also held as under:-

"12. It was not the case of the respondents that the statutory certificate had been obtained by any fraud or misrepresentation by the appellant in which case undoubtedly it would have been open for reconsideration. The conclusion of the High Court that the issuance of the certificate was "fictitious, unfounded and useless" by reasons of being null and void is therefore completely unsustainable. The decisions on the earlier occasion had been rendered by a proper competent forum, after hearing the parties and on perusal of records. An erroneous decision by a proper forum, unless assailed before a superior forum will attain finality inter partes.

*** *** ***

15. At this juncture we also consider it appropriate to take note of the submissions that the dismissal of the appeal by the respondent on grounds of limitation on 9-11-1971 gave a quietus to the matter on merits also as observed in Shyam Sundar Sarma [Shyam Sundar Sarma v. Pannalal Jaiswal, (2005) 1 SCC 436] as follows: (SCC p. 440, para 9)

"9.1. In Sheodan Singh v. Daryao Kunwar [(1966) 3 SCR 300 : AIR 1966 SC 1332] rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held: (AIR p. 1337, para 13: SCR pp. 308 H-309 B)

'13. ... We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.' "

60. From the law laid down by the Apex Court in the cases of ***Unnikrishnan(supra)*** and ***Vaijinath(supra)***, it is apparent that if the earlier decision had been rendered by competent court, after hearing the parties and on perusal of records, then even an erroneous decision by that court, unless assailed before a superior court, would attain finality in between the parties, and the findings of that earlier suit, would operate as res-judicata in a subsequent suit, between the same parties or their successors, where similar question is involved. It is also well-settled that the correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res-judicata. It has been specifically held that the matter in issue if, is purely of fact decided in the earlier proceedings by a competent court then, it must, in any subsequent litigation between the same parties, be recorded as finally decided and cannot be reopened. It was further held that this applies to even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties, which cannot be revised or reopened in a subsequent proceeding between the same parties. **The Apex Court also held that the only exception to the doctrine of res-judicata, is fraud that vitiates the decision and renders it a nullity or non est in the eye of law.** It is also apparent that where a decision is given by the trial court on merits and the matter is taken in appeal and the appeal is dismissed on the ground of limitation or default, then such dismissal, confirms the decision given on merits by the trial court.

61. It is apparent that in O.S. no. 28 of 1996, the issue of title and possession of the disputed bungalow no. 329 was directly in issue between the plaintiff and the defendant's, in which the plaintiff had pleaded that the disputed property belonged to the joint Hindu family of the late Sardari Lal Chhabra, who died on 5.8.1973, and after his death, family partition took place between the plaintiff and defendants in the month of January 1980, in which all the properties left behind by Sardari Lal

Chhabra, were divided between his seven sons, including Vinay Chhabra, who is the father of Rishav Chhabra and husband of Savita Chhabra, and in this partition, the disputed property came to the share of the plaintiff of that suit Mangal Sen Chhabra. The trial Court decreed the suit ex-parte in favour of the plaintiff by declaring that the plaintiff was the owner in possession of the disputed bungalow no. 329, civil lines Jhansi, in which the defendants had no right and share.

62. It is also apparent that in O.S. no. 28 of 1996, besides the legal heirs of late Vinay Chhabra and plaintiff, five other sons of late Sardari Lal Chhabra were arrayed as defendants no. 1 to 5, who never challenged the alleged partition that took place in the month of January 1980, which proves that indeed a partition took place between the seven sons of late Sardari Lal Chhabra, which was accepted by all the sons, and after the partition, the parties occupied the property, which came in their respective share.

63. It also appears that a release application under UP Act no. 3 of 1947 was filed by Sardari Lal Chhabra on the ground of his personal need, which was dismissed on 2.3.1972. An appeal filed by Sardari Lal Chhabra was also dismissed on 6.12.1972. Again, a release application under section 21(1)(a) of UP Act no. 13 of 1972 was filed by Mangal Sen Chhabra for getting released the disputed bungalow no. 329 from the tenant Smt. H. William(deceased) through LR's, on the ground of personal requirement on 23.4.1973, in which a plea was taken by Mangal Sen Chhabra that the property devolved on him on account of family settlement, which was dismissed by the court of Prescribed Authority on 10.7.1974 and it was held that the family settlement was not proved and therefore, Mangal Sen Chhabra cannot be said to be the sole owner of the house in question.. An appeal preferred by Mangal Sen Chhabra was also dismissed on 19.1.1976. Again, another release application under section 21(1)(a) of the above Act was filed on 11.7.1989, which was dismissed by the court of Prescribed Authority by concluding that no partition between Mangal Sen Chhabra and his brothers took place, which was reversed in appeal. The appellate order was challenged by the tenant Smt. H. William(deceased) through LR's by filing Civil Miscellaneous Writ Petition no. 2387 of 1990 which was allowed, by this Court vide order dated 31.7.1995.

64. It is well settled that in an eviction proceeding instituted in the court of Prescribed Authority constituted under UP Act no. 13 of 1972, between plaintiff and defendant, only relationship of landlord and tenant is seen, the ownership of the disputed property is neither in issue nor can be adjudicated by the court of limited jurisdiction, the proceedings are summary in nature as such, any finding given by such court, in these proceedings, regarding title and ownership of the disputed property, cannot operate as res-judicata .In view of this, the contesting defendants cannot legally rely upon any finding given by the above court, regarding title and ownership of the disputed bungalow. Even the trial court, has concluded ,that finding given in the proceedings under UP Act no. 13 of 1972, does not operate as res-judicata, insofar as the title of the disputed property is concerned.

Whether the ex-parte decree of O.S. no. 28 of 1996 can be set aside on the ground that it was passed against

minor Rishav Chhabra, whose interest was not duly protected by the court?

65. The legal heirs of deceased Vinay Chhabra, his wife Smt. Savita Chhabra and son Rishav Chhabra, have also assailed the ex-parte decree in O.S. no. 28 of 1996, on the ground that it was passed against the then minor Rishav Chhabra, the court appointed guardian ad litem Bharat Jain, Advocate, was in collusion and connivance with the plaintiff Mangal Sen Chhabra, the interest of the minor defendant was not protected, as such, the ex-parte decree was not binding on the defendants.

66. It is specifically recorded in the order dated 27.7.2001 passed by the court of Civil Judge (Senior Division), Jhansi in Miscellaneous Case no. 125 of 1999, Savita Chhabra and another versus Mangal Sen Chhabra that vide order dated 12.3.1997, the court had appointed Shri Bharat Jain, Advocate as guardian ad litem of the minor defendant, before deciding the suit ex-parte. It is also apparent that the above application instituted by minor under Order 9 Rule 13 CPC for setting aside the ex-parte decree had been dismissed by the court on 27.7.2001, and the Miscellaneous Civil Appeal no. 66 of 2001 preferred against this order, had also been dismissed for non prosecution on 30.7.2004, as such, the decree passed in O.S. no. 28 of 1996 has attained finality.

67. Section 6 of the Limitation Act, 1963 reads as under:-

***6.Legal disability**.—(1)Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.*

*(2)****

*(3)****

*(4)****

*(5)****

*Explanation.—****

68. The Apex Court in the case of ***Kameshwari Devi(SMT) alias Kaleshwari Devi and others vs. Barhani(SMT) dead by LRS. and others (1997)10 SCC 273,*** held as under:-

"4. It is true, as rightly contended by Dr Shankar Ghose, learned Senior Counsel, that in a case where the estate of the minor is involved in an action for partition or any other suit, the estate of the senior(sic minor) is required to be properly represented taking all diligent steps by either guardian ad litem or the court guardian. If the interest of the estate of the minor is not protected, necessarily, the minor on his attaining majority or within three years thereafter is entitled to file the suit under Section 7 of the Limitation Act, after cessation of the disability to question the correctness of a decree which is sought to be made binding on him. ***But in that case, the limited defence that could be open to him is that either the decree in the earlier suit was obtained by fraud/collusion or by negligence by the court guardian or that the guardian ad litem did not safeguard the interest of the estate of the minor. On proof of those***

facts, necessarily, the decree does not bind him and it is open to the court to go behind the decree and consider the right of the minor dehors the decree. *But, in this case, whether that question arises for decision is to be seen. It is true, as found by all the courts, that the document, Ex. C, Phatbandi was a document marked as D/2 in Suit No. 178 of 1957. The sheet-anchor, in that suit, the defence open to all the parties on the document was that it was not a genuine document and was brought into existence only to defraud the creditors. That question was common to the interest of all the persons including the minor. The parties had hotly contested the suit and the matter was carried up to the High Court and the High Court had considered it and recorded the finding that it was true, valid and binding deed being a registered partition deed and was acted upon; and it bound the parties. Under these circumstances, though the court guardian had not filed any separate written statement, it makes little difference on the facts in this case, for the reason that the defence on Ex. C was common to all and the estate of the minor was sufficiently represented by appointment of the court guardian and that court had, in fact, gone into that question. It binds the appellant and operates as res judicata.* ***If it were a case dehors the document and any other independent right was available and not set up nor considered in the earlier suit, necessarily that question could be gone into in the present suit since that was not pleaded by filing any written statement or contested by the court guardian in that behalf.*** *No other plea was raised in this suit. Under these circumstances, the finding that Phatbandi, Ex. C binds the parties including the appellant is a finding validly recorded."*

(emphasis supplied)

69. It is clear from the law laid down by the Apex Court in ***Kameshwari Devi(supra)*** that where the property of the minor is involved in a suit, it is required to be properly represented by either guardian ad litem or a guardian appointed by the court. It was further held that where the interest of the minor is not protected, in that case, the minor on attaining majority or within three years thereafter, is entitled to file the suit under the Limitation Act, after cessation of the disability, to question the correctness of a decree which is sought to be made binding on him. It was further held that where such a suit is filed by the minor on attaining majority, the limited defence that could be raised by such minor is that,either the decree in the earlier suit was obtained by fraud/collusion or by negligence by the court guardian or that the guardian ad litem did not safeguard the interest of the estate of the minor.

70. It is apparent that the minor defendant was represented by his mother Smt. Savitra Chhabra in case no.125 of 1999 filed under Order 9 Rule 13 CPC for setting aside the ex-parte decree passed in O.S. no. 28 of 1996 as well as, in Miscellaneous Civil Appeal no. 66 of 2001.

Effect of O.S. no. 301 of 2006 filed by Rishav Chhabra on attaining majority, for cancelling the ex-parte decree dated 31.03.1999 in OS. no. 28 of 1996 and it's dismissal for non prosecutioon on 7.12.2015

71. It is also apparent that the minor defendant Rishav Chhabra had also filed O.S. no. 301 of 2006 Rishav Chhabra versus Mangal Sen Chhabra and 6 others, on attaining majority in the court of Civil

Judge(Senior Division) Jhansi on 29.7.2006 with the following averments:-

"That he is the co-owner of house no.329,Jhokan Bagh,Jhansi which was purchased by his father Vinay Chhabra in the year 1965 through sale deed and its possession was also taken by his father. His father Vinay Chhabra died on 25.11.1987 in an accident and at that time he was minor and was in the care of his mother Smt. Savita Chhabra, who were harassed by the defendants, they did not get any share in the movable and immovable property of the joint Hindu family. At that time, he was represented by his mother, who resided in Allahabad and due to this, Mangal Sen Chhabra filed O.S. no.28 of 1996, in which notices were not served because the address given by the plaintiff was wrong. In 1996, he alongwith his mother resided in Allahabad, which was in the knowledge of Mangal Sen Chhabra but for obtaining the ex-parte decree, the plaintiff in that suit had effected service on his wrong address and had also subsequently obtained ex-parte decree. His mother had moved an application and had also filed Misc. Civil Appeal for setting aside the ex-parte decree but that was also rejected. His mother also didn't protect his interest and as such, the ex-parte decree is illegal and not binding on him. He became aware of the ex-parte decree during the pendency of O.S. no.129 of 2005 and when he tried to inquire from his mother about the above decree, even she didn't disclose the correct facts to him. It was further pleaded that in the above suit, no application was moved by the plaintiff for appointment of his guardian and even the court did not appoint anyone, as his guardian. It was further pleaded that in Civil Misc. Writ Petition no.2387 of 1990 Mrs. H. William versus 1st Additional District Judge,Jhansi, the alleged oral partition between plaintiff and defendants was not accepted. Besides this, as per the provisions of Hindu Minority and Guardianship Act,1956 without obtaining the permission of the court, the property of the minor cannot be partitioned. In view of this, if any partition had been effected by his mother, even then, it is not binding on him. Since the property was purchased in the name of his father Vinay Chhabra by registered sale deed in the year 1965, as such, the property never became the property of joint Hindu family, as such, it could not have been declared to be the property of the plaintiff Mangal Sen Chhabra in O.S. no.28 of 1996. The decree passed in the above suit was void and illegal, which was not binding on him. It was also pleaded that the cause of action for filing the suit arose on 17.3.2005, when he attained majority, thereafter, in the month of July 2005 when he became aware that the defendants had obtained ex-parte decree against him. The plaintiff in this suit claimed that it be declared by the court that the judgment and decree dated 31.3.1999 passed in O.S. no.28 of 1996, Mangal Sen Chhabra versus Ramjeet Chhabra and others, was a void and illegal document, which was not binding on him and the defendants be further restrained by decree of permanent injunction from interfering in his possession of disputed house no.329, Jhokan Bagh, Jhansi."

72. It is apparent that the above O.S. no.301 of 2006 was dismissed by the court of Additional Civil Judge(Senior Division) Court no.1, Jhansi, for non-prosecution on 7.12.2015.

73. It is also apparent that although the decree passed in O.S. no. 28 of 1996 had attained finality, with the dismissal of

Miscellaneous Civil Appeal no.66 of 2001 on 30.7.2004, even then, the minor defendant Rishav Chhabra had one opportunity of assailing the decree, on attaining majority or within a period of three years thereafter, on the ground that his interest in O.S. no. 28 of 1996 was not properly safeguarded and the guardian ad litem appointed by the court was in collusion and connivance with the plaintiff, by instituting a suit. **It is apparent that Rishav Chhabra had filed O.S. no. 301 of 2006, on attaining majority against Mangal Sen Chhabra and 6 others, which was dismissed for non prosecution by the court on 7.12.2015.** In view of this, the decree passed in O.S. 28 of 1996 has attained finality, in every respect, and even the minor defendant Rishav Chhabra cannot assail its legality on the ground that it was passed against his interest or his interest was not properly safeguarded by the guardian ad litem appointed by the court. It is apparent that the decree in O.S. no. 28 of 1996 has been passed by court of competent jurisdiction as such, even if, it is deemed erroneous, even then, it is binding on the parties to the suit, as such, it operates as res-judicata in subsequent suit between the parties or their successors. In view of this, the trial court had no legal jurisdiction to examine the validity of the decree passed in O.S. no. 28 of 1996, acting like an Appellate Court, which is wholly contrary to the settled legal principles. The trial court has thoroughly examined the validity of the decree passed in O.S. no. 28 of 1996, as if, it was hearing Appeal, against that decree. The trial court has ultimately concluded that the decree in O.S. no. 28 of 1996 does not operate as res-judicata because it was a collusive decree which was obtained fraudulently, meaning thereby, the plaintiff was not the owner in possession of the disputed bungalow no. 329, which is contrary to the decree passed in O.S. no. 28 of 1996. The trial court has fundamentally erred in ignoring the well-settled principle of res-judicata. The finding recorded by the trial court is whimsical, arbitrary and against all settled principles of law.

74. Learned counsel for the respondents have argued that since the decree in O.S. no. 28 of 1996 was fraudulent and collusive, which was against the interest of the minor defendant Rishav Chhabra, as such, there was no legal requirement on the part of the minor defendant to file a separate suit on attaining majority for cancelling the above decree. Learned counsel in support of his above argument, has relied upon the case of ***Asharfi Lal vs. Smt.Koili (Dead) through Lrs (1995)4 SCC 163 (by 3 Judges).***

75. The Apex Court in the case of ***Asharfi Lal(supra)*** held as under:-

"13. After the said decision of the Privy Council, the matter has been considered by various High Courts. Most of the High Courts have taken the view that though a judgment against a minor cannot be avoided on the ground of fraud or gross negligence on the part of his next friend under Section 44 of the Evidence Act, it is permissible for the minor to file a suit to set aside the decree on the ground of fraud or gross negligence on the part of his next friend. (See : Mahesh Chandra Bayan v. Manindra Nath Das [AIR 1941 Cal 401 : ILR (1941) 1 Cal 477] ; N.P.L. Egappa Chettiar v. S.V.L. Ramanathan Chettiar [AIR 1942 Mad 384 : (1942) 1 MLJ 155 : ILR (1942) Mad 526] ; Iftkhar Hussain Khan v. Beant Singh [AIR 1946 Lah 233 : ILR (1946) Lah 515 : 225 IC 456] ; Mohammad Bakhsh v. Allah Din [AIR 1942

Oudh 33 : 196 IC 457] ; Kamakshya Narain Singh Bahadur v. Baldeo Sahai [AIR 1950 Pat 97 : ILR 27 Pat 441] and Rameshwar Prasad v. Ram Chandra Sharma [AIR 1951 All 372 : 1950 ALJ 719] .) The Bombay High Court has, however, taken a different view and has held that gross negligence, apart from fraud or collusion on the part of the next friend or guardian ad litem or a minor litigant, cannot be made the basis of a suit to set aside a decree obtained against him. (See : Krishnadas Padmanabhrao Chandavarkar v. Vithoba Annappa Shetti [AIR 1939 Bom 67 (FB) : ILR 1939 Bom 340 : 180 IC 51] .) In that case Beaumont, C.J. has disagreed with the earlier decisions of the said High Court on the view that the said decisions were based on a misconception of English law and that under the English law an infant cannot challenge a decree properly passed against him on the ground that his guardian ad litem was guilty of gross negligence in suffering the decree, and if that is so, there was no reason why such a cause of action should lie in British India. Meredith, J., in Kamakshya Narain Singh Bahadur v. Baldeo Sahai [AIR 1950 Pat 97 : ILR 27 Pat 441] has dealt with the English law on the subject and has pointed out that Beaumont, C.J. in Krishnadas Padmanabhrao Chandavarkar v. Vithoba Annappa Shetti [AIR 1939 Bom 67 (FB) : ILR 1939 Bom 340 : 180 IC 51] was not right in his appreciation of the English law on the subject. According to the learned Judge (Meredith, J.) the substantive right of an infant, on attaining majority, to avoid a decree obtained against him owing to the gross negligence of his next friend was undoubtedly recognised in England from early times. The Privy Council in Talluri Venkata Seshayya v. Thadikonda Kotiswara Rao [AIR 1937 PC 1, 4 : (1937) 1 MLJ 113] has also pointed out that protection of minors against the neglect actings of their guardians is a special one. In the instant case, the High Court has proceeded on the basis that it is permissible for a minor to file a suit to set aside a decree on the ground of gross negligence on the part of his next friend. We are in agreement with the said view.

14. The question for consideration is whether, apart from filing a separate suit for setting aside a decree on the ground of gross negligence on the part of his next friend, it is permissible for a minor to avoid a decree, if relied upon in a subsequent proceeding, on the ground that the said decree was obtained on account of gross negligence on the part of his next friend in the previous suit. This would be permissible only if Section 44 of the Evidence Act can be invoked. As pointed out earlier, the Privy Council in Talluri Venkata Seshayya v. Thadikonda Kotiswara Rao [AIR 1937 PC 1, 4 : (1937) 1 MLJ 113] has laid down that Section 44 of the Evidence Act cannot be extended to cases of gross negligence. But in the said case the Privy Council has observed that the Court cannot treat negligence, or gross negligence, as fraud or collusion, unless fraud or collusion is the proper inference from the facts. In other words, in cases where an inference of fraud or collusion can be drawn from the negligence or gross negligence of the next friend it would be permissible for a minor to avoid the judgment or decree passed in the earlier proceeding by invoking Section 44 of the Evidence Act without taking resort to a separate suit for setting aside the decree or judgment.

15. In the present case, the consolidation authorities have found gross negligence on the part of Smt Budhna, the

next friend of the appellant, in prosecuting the earlier declaratory suit filed by her in the name of the appellant inasmuch as Smt Nanki, the mother of the appellant, was not examined as a witness and material documents were not produced although the said evidence was available. The question is whether an inference of fraud or collusion can be drawn from the said negligence on the part of Smt Budhna, the next friend of the appellant. The Deputy Director (Consolidation) did not examine the case from this aspect. He has proceeded on the basis that gross negligence on the part of the next friend of the appellant entitles him to avoid the decree passed in the earlier declaratory suit. The High Court has set aside the said order of the Deputy Director (Consolidation) on the view that a decree obtained against a minor due to negligence of the guardian is not void but voidable and the decree passed in the earlier declaratory suit was binding unless it was avoided by filing a suit in an appropriate court and that the consolidation authorities were not competent to grant the declaration of adjudication on validity or otherwise of the decree. The High Court has taken note of the provisions contained in Section 44 of the Evidence Act but has held that the same were not of any assistance to the appellant. In taking the said view the High Court, with respect, has ***failed to note that if a judgment falls within the ambit of Section 44 of the Evidence Act it can be avoided in the proceedings in which it is sought to be relied upon and it is not necessary to have it set aside by instituting independent proceedings in a competent court. What was required to be considered was whether the judgment in the earlier declaratory suit fell within the ambit of Section 44 of the Evidence Act and for that purpose it was necessary to examine whether an inference of fraud or collusion could be drawn from the gross negligence on the part of Smt Budhna, the next friend of the appellant, in conducting the earlier declaratory suit.*** *Since the matter has not been examined from this aspect, we consider it appropriate that the matter be remitted to the Deputy Director (Consolidation) for considering whether in view of the finding recorded by him there was gross negligence on the part of Smt Budhna in prosecuting the earlier declaratory suit filed, an inference of fraud or collusion can be drawn so as to attract the provisions of Section 44 of the Evidence Act.* ***If he finds that such an inference can be drawn he would not be bound by the judgment in the earlier declaratory suit but if he finds that such an inference cannot be drawn he would be bound by the said judgment till it is set aside by the competent court in an appropriate proceeding.***

(emphasis supplied)

76. The Apex Court in the case of ***Ramesh B.Desai and others vs. Bipin Vadilal Mehta and others (2006)5 SCC 638*** has held that Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. It was further held that particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard.

77. The Apex Court in the case of ***Asharfi Lal(supra)*** has held that if the earlier judgment against the minor falls within the ambit of section 44 of the Evidence Act, then it can be avoided in the proceedings in which it is sought to be relied upon and it is not necessary to have it

set aside by instituting independent proceedings in a competent court. According to the Apex Court, what is required to be considered is whether the judgment in the earlier declaratory suit fell within the ambit of section 44, of the Evidence Act and for that purpose it was necessary to examine whether an inference of fraud or collusion could be drawn from the gross negligence on the part of next friend of the minor, in conducting the earlier declaratory suit. It was further held that if, an inference of fraud or collusion can be drawn, then the minor is not bound by the judgment in the earlier declaratory suit but if, such inference cannot be drawn, then the minor is bound by the said judgment till it is set-aside by the competent court in an appropriate proceeding.

78. From the perusal of the written statement of defendant no.1&2 in O.S. no.129 of 2005, it appears that they pleaded that, the family partition that took place in the year 1980 among the heirs of late Sardari Lal Chhabra, was a sham transaction. According to the defendants, the partition never took place. The defendants pleaded that the decree in O.S. no. 28 of 1996 was not binding on the minor defendant Rishav Chhabra. It was further averred that the disputed house was purchased by Vinay Chhabra through his father, in the year 1965, through registered sale deed and its possession was also taken. It was accepted that Vinay Chhabra was minor at that time and after his death, his wife and son, became the owners in possession of the disputed house. It was further pleaded that in O.S. no. 28 of 1996 title of plaintiff Mangal Sen Chhabra could not have been decided.

79. It is apparent from the above pleadings of the defendants in their written statement that no specific pleading has been made as to how the decree in O.S. no. 28 of 1996 was fraudulent and collusive. It has nowhere been pleaded in what manner fraud was practised by the plaintiff Mangal Sen Chhabra upon the defendants and how the guardian ad litem appointed by the court neglected in protecting the interest of the minor defendant Rishav Chhabra. There is no pleading to the effect that the guardian ad litem appointed by the court in that case, was in collusion with the plaintiff Mangal Sen Chhabra. It is clear that, in the absence of specific pleading of fraud and collusion, the trial court could not have examined these issues while deciding the suit.

80. It is also apparent that the minor defendant Rishav Chhabra, on attaining majority, had indeed challenged the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996 by filing O.S. no. 301 of 2006 Rishav Chhabra versus Mangal Sen Chhabraand 6 others, which was dismissed for non-prosecution by the court of Additional Civil Judge(Senior Division) Court no.1, Jhansi vide order dated 7.12.2015 as such, Rishav Chhabra is precluded from challenging the validity of the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996, at this stage.

81. It is apparent that even on merits, the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996 cannot be challenged on the ground, that it was a fraudulent and collusive decree, in which the interest of the minor defendant Rishav Chhabra was not properly protected. Certainly, the trial court erred in concluding that the decree in O.S.no. 28 of 1996 was not binding on the

minor defendant Rishav Chhabra and his mother Smt.Savita Chhabra.

Admission of Vinay Chhabra in affidavit filed in P.A. case no. 65 of 1986 Mangal Sen Chhabra versus Smt. H. William before the court of Prescribed Authority, Jhansi.

82. The plaintiff filed the certified copy of the above affidavit of Vinay Chhabra in the trial court which was disbelieved by the trial court on the ground that, the affidavit was itself not believed in that eviction proceeding by the Prescribed Authority, as such, it has got no evidentiary value and cannot be relied in this case also. The trial court further concluded that the plaintiff should have filed the original affidavit as such, the certified copy of the affidavit was held inadmissible in evidence. The trial court further concluded that in the affidavit there is no mention of house number of Vinay Chhabra.

83. The above mentioned affidavit dated 16.12.1986 of Vinay Chhabra, reads as under(translated in English, from Hindi):-

'House no. 329, Jhokan Bagh, Civil Line, Jhansi, was registered in my name, the photo copy of which I'm filing. In partition, this house came to the share of my brother Mangal Sen Chhabra, in which, I have no concern or right. The full owner of the house is Mangal Sen Chhabra, who is also entitled to collect the rent. The opposite party used to pay rent to him(Mangal Sen Chhabra) and in his name(Mangal Sen Chhabra) rent was deposited in the court. Mangal Sen Chhabra is in dire need of the house. I have read the affidavit of Mangal Sen Chhabra, in which the facts have been correctly mentioned. For the sake of brevity, I'm not repeating the facts mentioned in the affidavit of Mangal Sen Chhabra. The contents of the affidavit of Mangal Sen Chhabra, be deemed part of my affidavit."

84. It is apparent that Vinay Chhabra mentioned the number of the disputed house in his affidavit, as 329 Jhokan Bagh, Civil Lines, Jhansi, but still, the trial court has recorded a perverse finding that in the affidavit, the number of the house is not mentioned. The trial court went further, by concluding that since the original copy of the affidavit was not filed, the certified copy of the affidavit is inadmissible, which is also a perverse finding, against all settled principles of law. It is evident that the original affidavit was available in the file of P.A. Case no.65 of 1986 and as such, only a certified copy of the above document could have been filed by the plaintiff in the instant suit.

85. The above affidavit of Vinay Chhabra and also the fact, that partition that took place in the month of January 1980, was never challenged by the 7 sons of late Sardari Lal Chhabra, during their lifetime, itself proves that the partition indeed took place between the sons of late Sardari Lal Chhabra, which was accepted and acted upon by the parties to the partition, who occupied the property, which came to their respective shares. It is also apparent that Vinay Chhabra died on 24.11.1987 and after his death, his legal heirs, his wife Smt. Savita Chhabra and minor son Rishav Chhabra had challenged the above partition for the first time, which lacked substance.

Case no.115 of 1990 under Guardian and Wards Act, 1890 filed by Smt. Savita Chhabra against Ramjeet Chhabra

86. The above fact was also affirmed from the certified copy of plaint in case no. 115 of 1990 Smt. Savita Chhabra versus Ramjeet Chhabra, filed by the plaintiff in the trial court. This case was filed by Smt. Savita Chhabra under section 39 of the Guardian and Wards Act, 1890 for the relief that the opposite party Ramjeet Chhabra be removed as guardian of the property of minor Rishav Chhabra and in his place, the applicant Savita Chhabra, who is the natural mother of the minor, be appointed as guardian of the person and property of the minor Rishav Chhabra. This application was filed on 23.4.1990 in the court of District Judge Jhansi, in which the applicant Smt. Savita Chhabra had disclosed the properties left behind by her husband late Vinay Chhabra, in which the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi was not mentioned. This fact proves that the disputed house never fell to the share of Vinay Chhabra after partition but, the contents of this application were disbelieved by the trial court on the ground that the minor was shown to be the partner in the properties, which implies that no partition took place till 1990.

87. The relevant paragraph 5 of the above application reads as under:-

"5.That late Sri Vinay Chhabra who left minor son, who is at this time, three years old, and had left the following property:-

(a) Minor Rishav Chhabra is partner in Chhabra Transport Service in Kanpur.

(b) Minor is a partner at M/S Prakash Guest House, Jhansi.

(c) Minor is a partner of house no. 360, civil lines ,Jhansi.

(d) Minor is a partner of bus no. UHH 979.

(e) Minor is a partner by way of succession of agriculture land situated at Tahsil Niwari, District Tikamgarh cost of land is ₹ 5 lakhs and the land is situated in Kanpur."

88. It is apparent that the above application was filed for appointing Smt. Savita Chhabra, as the natural guardian of the person and property of her minor son Rishav Chhabra on the ground that her husband Vinay Chhabra, had left behind the above-mentioned properties upon his death. The trial court believed the version of the defendants that the disputed house was not included in the above properties because it was the individual property of Vinay Chhabra, and only properties of joint Hindu family were mentioned in the application. It is apparent that on the death of Vinay Chhabra, his wife Smt. Savita Chhabra and son Rishav Chhabra became his legal heirs, on whom the property of Vinay Chhabra devolved as per Hindu Succession Act. Since, in the above mentioned properties, the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi is not mentioned, it amounts to an admission that Vinay Chhabra had no right title and interest in the above disputed property, which is now the subject matter of the dispute. Even if, the disputed property was not the property of joint Hindu family, and was the individual property of Vinay Chhabra, even then, upon the death of Vinay Chhabra, the property would have devolved on his legal heirs, as such, if Vinay Chhabra was the owner of the disputed property at the time of his death

on 24.11.1987, then the details of that property ought to have been mentioned in the above referred application. These facts amply prove that till the year 1990, the legal heirs of Vinay Chhabra were not claiming themselves to be the owners of the disputed bungalow no. 329, Jhokan Bagh, civil lines, Jhansi, which fortifies the plaintiffs case that Vinay Chhabra had himself submitted an affidavit in the above P.A.case no. 65 of 1986 on 16.12.1986, before the court of Prescribed Authority, in which he had admitted that the disputed property belonged to his brother Mangal Sen Chhabra.

Whether the disputed property was the property of the joint Hindu family of late Sardari Lal Chhabra and it was purchased benami in the year 1965 in the name of minor Vinay Chhabra?

89. The trial court has recorded a finding that the disputed property was not the joint Hindu family property of late Sardari Lal Chhabra and further the plaintiff failed to prove that family partition took place in the year 1980.

90. The certified copy of registered sale deed dated 12.1.1965, by which, the disputed property was purchased in the name of Vinay Kumar, minor son of Sardari Lal Chhabra, for a consideration of ₹ 8,000/- is on record.

91. The plaintiff Rajesh Chhabra PW-1 in his examination-in-chief proved the plaint averments. In his cross-examination, he admitted that when the disputed house was purchased in the name of Vinay Chhabra, he was not born. Vinay Chhabra had solemnised marriage in the year 1985. In the year 1980, he was about eight years old. The family partition among the sons of Sardari Lal was effected in the year 1980. It was an oral partition, which was not reduced into writing, it was among the seven brothers. In the family partition of 1980, Ramjeet Chhabra, Om Chhabra, Kishan Chhabra and Vinay Chhabra got Prakash Regency building, which was previously Jawla bank building. Balram and Vijay Chhabra got bungalow no. 330, Jhokan Bagh, Jhansi and his father,got the disputed bungalow no. 329,Jhokan Bagh. Jhansi. He does not remember the date and month, when family partition took place in the year 1980. He does not know whether the information of partition that took place in the year 1980 was published in the newspaper or not, whether the information of partition was given to the Nagarpalika or not, he does not know whether on the basis of partition, the ownership of disputed house in the record of Nagarpalika, was mutated in the name of his father or not. He does not remember whether water tax and house tax was paid by his father or not, he does not know whether the name of other brothers are recorded in the Nagar Palika or not. He deposed that since there was no inter-se dispute, as such, there was no necessity of fulfilling all the above requirements. He further deposed that he became aware of the partition, from his elders.

92. Mangal Sen Chhabra examined himself as PW-2 in the trial court. He deposed in his examination-in-chief that his father Sardari Lal had purchased house no. 329,Jhokan Bagh, civil lines, Jhansi in the name of his minor son Vinay Chhabra in the year 1965, who died on 24.11.1987. He further deposed that the disputed house came to his share, on partition. Thereafter, in partition between him and his son Rajesh Chhabra, the disputed house came to the

share of Rajesh Chhabra. Initially, Smt. H. William and Morris William became his tenant, thereafter, they became Rajesh Chhabra's tenant. He deposed that O.S. no.28 of 1996, which was decided on 31.3.1999, was between the brothers and Smt. Savita Chhabra and Rishav Chhabra had no concern with the disputed house.

93. Mangal Sen Chhabra PW-2 deposed in cross-examination that an oral family partition took place in January, 1980 between him and his six brothers, which was not reduced into writing, which was decided by a case. His father purchased house no. 330 Jhokan Bagh in favour of minor Balram and himself, in the year 1964–65, which came to the share of Balram and Vinay Chhabra. The disputed house came to his share. His brother Ram, Kishan, Shyam and Vinay got house no. 360 and land adjoining house no. 330. At the time of partition, his parents were not alive. His father died on 5.8.1973 and mother died in the year 1979. His father had married twice. From the first wife, a son and a daughter were born, who are alive, who were partitioned wayback in the year 1962. He has no sister. On the basis of partition, none was mutated in the year 1980 in the records of Nagar Palika. When it happened subsequently, he does not remember. He had filed P.A. case no. 65 of 1986 against Smt. H. William for eviction of house on the ground that, he received that house in partition. In that case, a writ was filed in the High Court by Smt. H. William, in which his case was dismissed. He does not remember whether the writ was dismissed either because the partition was not accepted or he was also not accepted landlord. The partition was confirmed in O.S. no. 28 of 1996 Mangal Sen Chhabra versus Ramjeet Chhabra. Partition between him and his son Rajesh, took place in November 1995, which was published in the newspaper and also case no. 539 of 2000 was filed. After the partition in year 1995, name of Rajesh had been mutated in the record of Nagarpalika. He denied the suggestion that family partition did not take place in the year 1995.

94. The defendant Sanjay Agarwal examined himself as DW-1 in the trial court. In the examination-in-chief he proved the case of the defendants. He deposed that the defendants are not bound by the judgment passed by the court of Civil Judge (Junior Division), Jhansi in O.S. no. 539 of 2000 Mangal Sen Chhabra versus Rajesh Chhabra because the defendants were not the parties in that suit. He further deposed that the plaintiff and Mangal Sen Chhabra had filed SCC case no. 118 of 1996 Rajesh Chhabra and another versus Samson William and others in the court of JSCC Jhansi, for eviction of tenants from disputed house, which was dismissed on 16.8.2003 because the plaintiff was not held to be the landlord of the disputed house. He further deposed that the plaintiff had filed against the defendants no.4 & 5, P.A. case no.8 of 2002 Rajesh Chhabra versus Samson William and others under section 21 of UP Act no. 13 of 1972, which was dismissed by the court of Prescribed Authority/JSCC, Jhansi and in that case also, the plaintiff was not held to be the landlord of the disputed house. He further deposed that all the sale deeds executed by defendant no.2 and 3 in favour of defendants no.1,6 to 8 are valid. He proved the receipts of house tax, electricity bill,etc.

95. DW-1 deposed in cross-examination that he was born on 19.8.1965. He does not know about partition between

the heirs of Sardari Lal. He does not know anything about O.S. no. 28 of 1996. Sale deed dated 12.1.1965 was not executed in his presence. He admitted that on 12.1.1965 Vinay Chhabra was minor. He does not know whether at the time of the purchase of the property, Vinay Chhabra was working or not. He made no effort to know what Vinay Chhabra did and from where the property was purchased. He denied that the property was not purchased from the funds of Vinay Chhabra. He had no knowledge about the judgment in O.S. no. 28 of 1996.

96. The Apex Court in the case of ***Pushpalata versus Vijay Kumar(dead) through Lrs. and others 2022 SCC OnLine SC 1152,*** while discussing law on holding particular transaction as benami , held as under:-

"22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh(2007)6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam(2004)7 SCC 233:

"47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam(supra) wherein a Division Bench of this Court held:

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

*** *** ***

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.""

97. From the perusal of the sale deed dated 12.1.1965 it is evident that the property was purchased in the name of minor Vinay Chhabra, for a consideration of ₹ 8,000/-. At that time, Vinay Chhabra was minor, having no independent source of income, as such, the whole consideration was paid by his father Sardari Lal Chhabra. Vinay Chhabra at that time, was under the guardianship of his father Sardari Lal. The possession of the property and the custody of the title deeds, also remained with Sardari Lal. After the sale, the property was treated, as property of the joint Hindu family, which was orally partitioned along with other properties of the joint family in the year 1980, after the death of Sardari Lal in the year 1973. Mangal Sen Chhabra PW-2 proved that after the death of Sardari Lal Chhabra, joint family properties, were orally partitioned among the seven sons of Sardari Lal Chhabra in the year 1980, and the disputed bungalow no. 329 came to his share and possession. When the above facts are appreciated in the light of the above law laid down by the Apex Court in the case of ***Pushpalata(supra),*** they convincingly prove that Vinay Chhabra was the benami owner of the disputed property, the real owner being Sardari Lal Chhabra.

98. Since the partition was oral, which was not reduced into writing as such, there is no documentary evidence of partition but, as previously discussed, even Vinay Chhabra had given affidavit in P.A. case No. 65 of 1986, Mangal Sen Chhabra versus Smt. H. William accepting that in the family partition, the disputed house no. 329 was given to Mangal Sen Chhabra and he had no concern with that house. It is also apparent that Vinay Chhabra remained alive till 24.11.1987 and till then, he never disputed the family partition, the dispute only arose after his death, when his legal heirs Smt. Savita Chhabra and Rishav Chhabra refused to accept the family partition.

99. It is also apparent that in O.S. no. 28 of 1996, the plea of joint Hindu family property was raised by the plaintiff Mangal Sen Chhabra, who also pleaded that after the death of his father Sardari Lal Chhabra, the properties of joint Hindu family were orally partitioned among the seven sons of late Sardari Lal Chhabra in the month of January, 1980 and in this partition, the disputed bungalow no. 329 came to the

share of plaintiff Mangal Sen Chhabra. As previously discussed, the trial court in O.S. no. 28 of 1996 accepted the above pleadings of the plaintiff Mangal Sen Chhabra and decreed the suit ex-parte on 31.3.1999, which has attained finality and operates as res-judicata between the parties, because the title and possession of the disputed bungalow no. 329 was directly in issue in that suit. In view of the above, the trial court erred in concluding that the disputed property was not the property of the joint Hindu family of late Sardari Lal Chhabra, which was also not partitioned in the year 1980. The above finding recorded by the trial court is wholly perverse and arbitrary.

Whether the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996 required registration?

100. The trial court concluded that the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996 required registration, because there was no pre-existing right of the plaintiff Mangal Sen Chhabra in the disputed property.

101. The Apex Court in the case of ***Mohammade Yusuf and others vs. Raj Kumar and others(2020)10 SCC 264*** has held that where the compromise decree comprising immovable property was with regard to the property, which was the subject matter of the suit, then it does not require registration. It was held as under:-

"7. A compromise decree passed by a court would ordinarily be covered by Section 17(1)(b) but sub-section (2) of Section 17 provides for an exception for any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by virtue of sub-section (2)(vi) of Section 17 any decree or order of a court does not require registration. In sub-clause (vi) of sub-section (2), one category is excepted from sub-clause (vi) i.e. a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject-matter of the suit or proceeding requires registration, although any decree or order of a court is exempted from registration by virtue of Section 17(2)(vi). A copy of the decree passed in Suit No. 250-A of 1984 has been brought on record as Annexure P-2, which indicates that decree dated 4-10-1985 was passed by the Court for the property, which was subject-matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 4-10-1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to the judgment of this Court in Bhoop Singh v. Ram Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] , in which case, the provision of Section 17(2)(vi) of the Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down the following in paras 16, 17 and 18: (SCC pp. 715-16)

"16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or

order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council [Ed.: The reference is to Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., 1919 SCC OnLine PC 41 : (1918-19) 46 IA 240] and this Court's cases [Ed.: The reference is to Mangan Lal Deoshi v. Mohd. Moinul Haque, 1950 SCC 760 : AIR 1951 SC 11; Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : AIR 1951 SC 280 and Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke, AIR 1954 SC 352] , it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case [Fazal Rasul Khan v. Mohd-ul-Nisa, 1943 SCC OnLine Lah 128 : AIR 1944 Lah 394] , benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

15. This Court in Som Dev v. Rati Ram [Som Dev v. Rati Ram, (2006) 10 SCC 788] while explaining Section 17(2)(vi) and Sections 17(1)(b) and (c) held that all decrees and orders of the Court including compromise decree subject to the exception as referred that the properties that are outside the subject-matter of the suit do not

require registration. In para 18, this Court laid down the following: (SCC p. 800)

"18. ... But with respect, it must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit....."

102. It is apparent from the discussion made here-in-before, that Mangal Sen Chhabra was having pre-existing right in the joint Hindu family property, left behind by late Sardari Lal Chhabra, being one of his heirs, regarding which an oral partition took place between the seven sons of late Sardari Lal Chhabra in the month of January 1980, in which, the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi, came to the share of Mangal Sen Chhabra, regarding which declaration of ownership and possession was sought from the court by filing O.S. no. 28 of 1996 which was decreed ex-parte by the court on 31.3.1999. It is apparent that, Mangal Sen Chhabra was having pre-existing ownership and possession of the disputed house, as such, no new ownership right in the disputed property was conferred by the court in Mangal Sen Chhabra by the ex-parte decree dated 31.3.1999, in declaring him to be the owner in possession of the disputed property, as such, in accordance with the law laid down by the Apex Court in the case of ***Mohammade Yusuf(supra)*** the ex-parte decree was not required to be registered, in accordance with the provisions of Registration Act. Clearly, the trial court erred in concluding that the ex-parte decree in O.S. no. 28 of 1996 required registration since, it created new rights in the disputed property in favour of plaintiff Mangal Sen Chhabra.

Whether Smt. H. William was tenant in the disputed property and after her death, her sons defendant no.4 Samson William and defendant no.5 Morris William inherited tenancy?

103. It is apparent that in the suit itself the plaintiff has averred that when the disputed house was purchased by Sardari Lal Chhabra in the name of Vinay Chhabra in the year 1965, then at that time Smt. H. William, the mother of defendant no.4 and 5 was a tenant in that house, who died subsequently, and thereafter, defendant no.4 and 5 inherited the tenancy in the disputed house.

104. The defendants in the written statement accepted that Smt. H. William was a tenant in the disputed house, and for her eviction, the plaintiffs father Mangal Sen Chhabra filed P.A.case no. 65 of 1986 under section 21 of the UP Act no. 13 of 1972 before the court of Prescribed Authority Jhansi, which was rejected and challenged in appeal by the plaintiffs father, which was allowed by the court of first Additional District Judge Jhansi, against which Smt. H. William had filed Civil Misc.Writ Petition no.2387 of 1990 before the High Court. It was also accepted by the defendants that during the pendency of the Writ Petition,Smt. H. William died, leaving her two sons as her legal heirs. It was also mentioned that the Writ Petition was allowed by the High Court on 31.7.1995, consequently P.A. case no. 65 of 1986 was dismissed and Mangal Sen Chhabra was not held to be the owner and landlord of the disputed house.

105. It was further mentioned by the defendants in their written statement that plaintiffs father Mangal Sen Chhabra had also filed SCC case no.118 of 1996 Mangal Sen Chhabra versus Samson William and Morris William in the court of JSCC, Jhansi for eviction of tenants from the disputed house which was dismissed on 16.8.2003, in which plaintiff and his father were not held to be the owner and landlord of the disputed house, aggrieved against which, SCC Revision No. 67 of 2003 was filed, which was allowed by the court of first Additional District Judge Jhansi vide order dated 23.12.2005, which had also been challenged by filing Writ Petition in the High Court.

106. The defendants have accepted that in the disputed house two sons of Smt. H. William, namely Samson William and Morris William were the tenants in possession, but they never remained the tenants of plaintiff or his father.

107. It was also averred by defendant no.1 & 2 in their written statement, that Rajesh Chhabra had also filed P.A.case no. 8 of 2002 Rajesh Chhabra versus Samson William and another, under section 21 of the UP Act no. 13 of 1972, before the court of Prescribed Authority/JSCC Jhansi,which was pending. This case was subsequently dismissed on merits on 11.5.2007, which was challenged by filing Rent Control Appeal no.22 of 2007 Rajesh Chhabra versus Samson William and others.

108. All these facts, amply prove that in the disputed house,Smt. H. William was the tenant and after her death, her two sons namely, Samson William and Morris William became joint tenants.

Whether the possession of the tenants, amounts to legal possession of the plaintiff, insofar as the disputed house is concerned?

109. From the discussion made herein above, it is apparent that, at present Samson William and Morris William are the tenants in the disputed property. It is also apparent that earlier, plaintiffs father Mangal Sen Chhabra had filed SCC case no. 118 of 1996 and P.A. case no. 65 of 1986 for eviction of tenants under UP Act no. 13 of 1972, which were dismissed. The plaintiff had also filed P.A.case no. 8 of 2002 against the tenants, which was dismissed on 11.5.2007 which was challenged by filing Rent Control Appeal no.22 of 2007 Rajesh Chhabra versus Samson William and others. It is also apparent that against dismissal of SCC case no.118 of 1996 vide judgment and decree dated 16.08.2003, SCC Revision no.67 of 2003 Rajesh Chhabra and Mangal Sen Chhabra versus Samson William and others was filed, which was dismissed on 23.12.2005, but the Revisional Court recorded a finding that the plaintiff and Mangal Sen Chhabra were the owner of the disputed property, which was challenged by Rishav Chhabra in Writ A no.20677 of 2006 Rishav Chhabra and another versus Rajesh Chhabra and others, which was disposed of by this Court on 20.4.2010, by specifically concluding that, in a rent suit any observation or finding with regard to title would not bind the regular civil court. Since, the Rent Control Appeal 22 of 2007 is pending, in which it will be decided whether there was a relationship of landlord and tenant, between the plaintiff and the defendants Samson William and Morris William. Whether the plaintiff or his predecessor are the landlord of the tenants in the disputed house, can neither be given by this Court nor it is the subject matter of the suit or appeal, as such, this

Court refrains from expressing any opinion on the relationship of landlord and tenant between the parties.

110. It is apt to mention here that in PA case no. 8 of 2002 Rajesh Chhabra versus Samson William and others, decided by the court of Prescribed Authority/JSCC, Jhansi ,vide judgment and order dated 11.5.2007, the court recorded that according to the written statement of the defendant Rishav Chhabra, the tenants/defendants no.1 & 2 Samson William and Morris William had handed the possession of the disputed house on 19.4.2005 to Rishav Chhabra and Savita Chhabra, because the house had become dilapidated and as such, Samson William and Morris William were not in possession of the disputed house. In that PA case no. 8 of 2002, Rishav Chhabra and Smt. Savita Chhabra had asserted themselves to be the landlords of the above tenants. In these circumstances if, the plaintiff is held to be the landlord of the above tenants, then it will be deemed that plaintiff is in lawful possession of the disputed house no. 329, through his tenants Samson William and Morris William.

111. It is also well settled that the tenants are bound to surrender the possession of the tenanted accommodation to the landlord, who had inducted them into tenancy, even if, some other person is the owner of the tenanted accommodation, unless and until, the landlord and owner are one and the same person.

Whether the court erred in declaring in OS no. 28 of 1996 Mangal Sen Chhabra the owner in possession of the disputed house, because prior to the filing of the suit, in the year 1995 itself, in the alleged family partition between him and his son Rajesh Chhabra, the disputed house had already devolved on his son Rajesh Chhabra?

112. It is mentioned in the judgment dated 31.3.1999 in O.S. no. 28 of 1996 that the plaintiff Mangal Sen Chhabra had pleaded that after the family partition that took place in the month of January 1980 between the sons of late Sardari Lal Chhabra, in which the disputed house came to the share of Mangal Sen Chhabra, another partition took place in the year 1995 between Mangal Sen Chhabra and his son Rajesh Chhabra, in which the disputed house came to the share of his son Rajesh Chhabra.

113. It is apparent that in OS No. 28 of 1996, the plaintiff Mangal Sen Chhabra sought declaration of ownership of the disputed house on the basis of family partition that took place in January 1980, between the heirs of late Sardari Lal Chhabra. The plaintiff had only sought declaration regarding the above ownership. It is immaterial that, in subsequent family partition, which took place in the year 1995, the plaintiff Mangal Sen Chhabra was divested from the ownership of the disputed house. It is also apparent that the plaintiff Mangal Sen Chhabra had neither claimed any declaration regarding the subsequent partition that took place in the year 1995 between him and his son Rajesh Chhabra, nor any finding, regarding this, had been recorded by the court. The subsequent family partition that took place in the year 1995, was not in issue, in the suit. In view of the above facts, even if, a family partition took place between Mangal Sen Chhabra and his son Rajesh Chhabra in the year 1995, even then, the ex-parte decree dated 31.3.1999 in O.S. no. 28 of 1996, is binding on the parties, which cannot be challenged on this ground.

Whether the plaintiff 's suit is barred by section 34, 38 and 41(h) of the Specific Relief Act?

114. The trial court concluded that since the plaintiff was not in possession of the disputed house, as such, he should have claimed the relief of possession, which he had not, as such, it was held that the plaintiff 's suit was barred by section 34 and 41(h) of the Specific Relief Act. It was further held that since the plaintiff claimed the relief of permanent injunction, who was not in possession, as such, the plaintiff cannot be granted this relief, in view of section 38 of the Specific Relief Act.

115. The Apex Court in the case of ***Anathula Sudhakar vs. P. Buchi Reddy(Dead) by Lrs. and others (2008)4 SCC 594,*** while discussing the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and /or possession with injunction as a consequential relief, held as under:-

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the

details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. ***The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees.*** *Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.*

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. ***If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title.*** *This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."*

(emphasis supplied)

116. It is apparent from the discussion made here-in-before, that previously Mangal Sen Chhabra and subsequently, the plaintiff is the true owner of the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi. It is also apparent that regarding eviction of tenants from the disputed house, Rent Control Appeal no.22 of 2007 is pending. It is also apparent that tenants Samson William and Morris William are residing in the property, who have allegedly handed over the vacant possession of tenanted accommodation to the defendants Smt. Savita Chhabra and Rishav Chhabra, who are not the true owner's of the disputed house. The tenants were bound to handover the vacant possession of the tenanted accommodation to their landlord or true owner of the disputed house. In such circumstances, it will be deemed that the plaintiff is in lawful possession of the disputed house, through

tenants, who is entitled to the relief of permanent injunction against the defendants. In these circumstances, the trial court erred in concluding that the plaintiff 's suit was barred by section 34, 38 and 41(h) of the Specific Relief Act.

117. The learned counsel for the respondents submitted that since the plaintiff was not in possession of the disputed house, as such, the suit was barred by section 34 of the Specific Relief Act, because the consequential relief of possession was not claimed by the plaintiff. To buttress his argument, the learned counsel has placed reliance on the law laid down by the Apex Court in the following cases:-

(1)Venkataraja & others versus Vidyane Doureradjaperumal (2014) 14 SCC 502

(2)Vasantha(Dead) through LR versus Rajalakshmi@ Rajam(Dead) through Lrs 2024 INSC 109

(3)Mallavva and another versus Kalsammanavara Kalamma(Since Dead) by Lrs and others 2024 INSC 1021

(4)Rajeev Gupta and others versus Prashant Garg and others 2025 INSC 552

118. I have gone through the above case law submitted by the learned counsel for the respondents. There is no quarrel with the proposition of the law laid down by the Apex Court in the above judgments. It is well settled that where there is a cloud on the title of the plaintiff regarding the disputed property and who is also, not in possession of the disputed property, then in addition to the declaration of his title, he should mandatorily claim possession of the disputed property, and if, the possession of the disputed property is not claimed then, the plaintiff 's suit is barred by section 34 of the Specific Relief Act.

119. The above case law submitted by the learned counsel for the respondents are not applicable to the facts of this case because, the plaintiffs title was never in cloud because he was claiming title under his predecessor Mangal Sen Chhabra, who had already been declared the owner in possession of disputed house no. 329, Jhokan Bagh, civil lines, Jhansi, by declaratory decree dated 31.3.1999 in O.S. no. 28 of 1996, by a competent court of jurisdiction, which had attained finality, as already held by this Court in this judgment here-in-before. It has already been held by this Court in this judgment that the above ex-parte decree operates as res-judicata in this case and consequently, the defendants are restrained from challenging the validity and legality of the ex-parte decree in the instant suits and appeals. In view of the above, the plaintiff was not required to seek declaration of his title regarding the disputed house in the instant suits.

120. Insofar as the ownership of the disputed house is concerned, as discussed by this Court in this judgment here-in-before, the court of Prescribed Authority and JSCC Jhansi, were not competent to give any finding regarding the ownership of the disputed house, and if, such finding has been given, it is illegal. It is also evident that previously, the court of Prescribed Authority and the JSCC, Jhansi had simply not accepted that any partition took place between the heirs of late Sardari Lal Chhabra in the year 1980 and on this ground, it was held that since Mangal Sen Chhabra and Rajesh Chhabra failed to

prove the above family partition, as such, they also failed to prove that they are the owner and landlord of the disputed property.It is also well settled in ***S.K.Sattar Sk. Mohd.Choudhari vs. Gundappa Amabadas Bukate AIR 1997 SC 998,*** that a tenant cannot challenge the family partition between the owners of the disputed property. Of course, it is open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute. It is also evident that, the above finding of the Prescribed Authority and JSCC, Jhansi that family partition of the disputed property is not proved, is in teeth, of the decree in O.S. no. 28 of 1996, which has conclusively declared that the plaintiff 's predecessor Mangal Sen Chhabra, was the owner in possession of the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi, on the basis of the family partition that took place among the heirs of late Sardari Lal Chhabra in the year 1980.

121. It is also apparent that eviction proceedings are pending in different Courts between the plaintiff and the tenant's Samson William and Morris William regarding their eviction from the disputed house under UP Act no. 13 of 1972, as such, as per the law laid down by the Apex Court in the case of ***Anathula Sudhakar(supra)*** it will be deemed that the plaintiff is in lawful possession of the disputed house, through tenants. In view of this, there is no necessity for the plaintiff to seek the relief of possession of the disputed house. Clearly, the trial court erred in concluding that the plaintiff 's suit is barred by section 34 of the Specific Relief Act because the plaintiff was not in possession and he had not claimed the relief of possession of the disputed house.

122. The Apex Court in the case of ***Hussain Ahmed Choudhury & Ors. vs. Habibur Rahman(Dead) through Lrs. & Ors. 2025 SCC Online SC 892,*** while discussing section 34 of the Specific Relief Act, 1963, held as under:-

"25. Having explained the scope of Section 31, we now deem it necessary to examine Section 34 of the Act, 1963, which reads thus:

"Section 34. Discretion of court as to declaration of status or right.-

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee."

26. Section 34 entitles a person to approach the appropriate court for a declaration, if that person is entitled to (i) any legal character or (ii) any right as to any property. "Legal character" and "right to property" are used disjunctively so that either of them, exclusively, may be the basis of a suit. The disjunctive 'or' cannot be read as a conjunctive 'and'.

27. The object of the proviso to Section 34 is to obviate the necessity for multiple suits by preventing a person from getting a mere declaration of right in one suit and then subsequently seeking another remedy without which the declaration granted in the former suit would be rendered otiose. However, the answer to the question whether it was incumbent upon the plaintiff to ask for further relief must depend on the facts of each case and such relief must be appropriate to and consequent upon the right or title asserted. "Further relief" must be a relief flowing directly or necessarily from the declaration sought, i.e., the relief should not only be capable of being granted but of being enforced by the court and such relief should be necessary to make the declaration fruitful. The relief must also be such that it is not automatically granted to the plaintiff by virtue of the declaration already sought for.

28. ***The words used in proviso to Section 34 are "further relief" and "no other relief". Since, a further relief must flow necessarily from the relief of declaration, if such further relief is remote and is not connected in any way with the cause of action which has accrued in favour of the plaintiffs, then there is no need to claim a further relief and the proviso to Section 34 will not be a bar. All that the proviso forbids is a suit for pure declaration without necessary relief where the plaintiff being able to seek such a relief, has omitted to do so. The proviso must not be construed in a manner which compels the plaintiff to sue for any and all the reliefs which could possibly be granted to him. The plaintiff must not be debarred from obtaining a relief that he wants for the reason that he has failed to seek a relief which is not directly flowing from the relief of declaration already sought for.***

(emphasis supplied)

29. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed under Section 31 of the Act, 1963. ***But if a non-executant seeks annulment of a deed, he has to only seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him.*** *The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' — two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non est/illegal and he is not bound by it. In essence, both may be suing to have the deed set aside or declared as non-binding. [See : Suhrid Singh alias Sardool Singh v. Randhir Singh, reported in (2010) 12 SCC 112]*

(emphasis supplied)

30. ***As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him.*** *We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject.*

(emphasis supplied)

31. In Unni v. Kunchi Amma reported in 1890 SCC OnLine Mad 5, the legal position has been thus explained:

"If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as nonexistent and sue for their right as if it did not exist."

32. The same principle has been distinctly laid down by the Privy Council in Bijoy Gopal Mukerji v. Krishna Mahishi Debi, reported in 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 was fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:

"A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint for a declaration that the ijara was inoperative as against them, as leading up to their prayer for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property were not in fact voidable, but were binding on the reversionary heirs."

33. In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. This is clearly explained by Wadsworth, J., in the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, reported in 1939 SCC OnLine Mad 149, thus:

"When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void 'in toto', and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he Is not in a position to get that decree or that deed cancelled 'in toto'. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is

invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed."

34. Therefore, filing a suit for cancellation of a sale deed and seeking a declaration that a particular document is inoperative as against the plaintiff are two distinct, separate suits. The plaintiff in the present case, not being the executant of the sale deed dated 05.05.1997 executed in favour of the respondent no. 1 (original defendant no. 14), was therefore, not obligated to sue for its cancellation under Section 31 of the Act, 1963. The question that remains is whether the plaintiff ought to have sought for a declaration that the sale deed dated 05.05.1997 was inoperative in so far as he is concerned or is not binding on him.

35. One should not lose sight of the fact that a suit for declaration of title to be decided by a court takes within its fold, consideration of several factors as to how the plaintiff is entitled for declaration of title. In such cases, the plea of the defendants about the validity, enforceability and binding nature of any document defeating the title of the plaintiff have also to be considered. In such cases, the court naturally views the evidence on both sides leaving apart the frame of the suit.

36. Therefore, the High Court having concurred with the Courts below on the legality and validity of the Gift Deed should not have dismissed the suit only on the ground that the plaintiff failed to pray for cancellation of the sale deed. ***The High Court should have kept the settled position of law in mind that the declaration of title is as good as a relief of cancellation of the sale deed or at least, a declaration that the sale deed is not binding on the plaintiff being void and thus non est.***

(emphasis supplied)

37. Furthermore, it is a well-known and settled principle of law that the plaint must be read as a whole and the actual relief sought can also be culled out from the averments of the plaint. Those reliefs can be granted, if there is evidence and circumstances justifying the grant of such relief, though not directly or specifically claimed, or asked as a relief. The plaintiff had averred in his plaint that the original defendant nos. 1 to 6 had no title or saleable rights over the suit property. This reflects the intention of the plaintiff to not be bound by any instrument which they may have executed in favour of another party.

38. Courts have ample inherent powers and indeed it is their duty to shape their declaration in such a way that they may operate to afford the relief which the justice of the case requires. Section 34 of the Act, 1963 is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the Section. Section 34 merely gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of courts to give declarations of right in appropriate cases falling outside Section 34. The circumstances in which a declaratory decree under Section 34 should be awarded is a matter of discretion depending upon the facts of each case. [See : Supreme General Films Exchange Ltd. v. His

Highness Maharaja Sir Brijnath Singhji Deo of Maihar, reported in (1975) 2 SCC 530]

123. From the above law laid down by the Apex Court in the case of ***Hussain Ahmed Choudhury(supra)*** it is evident that where the plaintiff is not an executant of a document, he is not obligated to sue for it's cancellation. He is only required to seek a declaration that the document is invalid, or non-est, or illegal or that it is not binding on him. In view of this, in the instant case, the plaintiff was not required to seek cancellation of the agreement to sell or the sale deeds executed by Smt. Savita Chhabra and Rishav Chhabra in favour of other defendants.

To what relief the plaintiff - appellant is entitled to get?

124. From the above discussion, it is apparent that, the plaintiff is the true owner of the disputed house no. 329, Jhokan Bagh, civil lines, Jhansi. The defendants Smt. Savita Chhabra and Rishav Chhabra had no concern with this property, but they had illegally executed several sale deeds on 15.5.2006, which were registered on 20.7.2006, in respect of the above property, in favour of other defendants in the suit, which are *void ab-initio,* which are not binding on the plaintiff. The plaintiff has claimed that by declaratory decree of the court, the above sale deeds executed by defendants Smt. Savita Chhabra and Rishav Chhabra in favour of other defendants be declared null and void, not binding on the plaintiff and further, the defendants be restrained from interfering, alienating, demolishing, constructing or transferring the disputed property. It is apparent that, the trial court erred in dismissing the plaintiff 's suit for declaration and permanent injunction. Accordingly, both the appeals are liable to be allowed.

125. **Accordingly,First Appeal no. 60 of 2011 and 70 of 2011, both the appeals are allowed.** The judgment and decree of the trial court dated 9.12.2010 in O.S. no. 129 of 2005 and 365 of 2006 is set aside and both the suits are decreed.

126. **The plaintiff is entitled to the following reliefs in O.S. 129 of 2005:-**

(i) A declaratory decree is granted in favour of the plaintiff against the defendants that the agreement to sell dated 20.4.2005 executed by defendant no. 2 & 3 in favour of defendant no.1 regarding bungalow no. 329, Jhokan Bagh, Jhansi, the boundaries of which are mentioned at the end of the plaint, which is registered in the office of Sub-Registrar, Jhansi in register no.1, khand-1317, at page no. 239 – 260, serial no. 3425 on 23.4.2005, is a null and void ab-initio document, which is not binding on the plaintiff. An information to this effect be also sent to the concerned sub-registrar office.

(ii) A decree of permanent injunction is granted in favour of the plaintiff against the defendants, whereby, the defendants are forever restrained from demolishing, transferring, plotting, alienating, damaging, interfering in the peaceful possession of the plaintiff or creating any right whatsoever in bungalow no.329, Jhokan Bagh, Jhansi, the boundaries of which are mentioned at the end of the plaint.

127. **The plaintiff is entitled to the following reliefs in O.S. no.365 of 2006 :-**

(i) A declaratory decree is granted in favour of the plaintiff against the defendants, that the sale deeds executed by Smt. Savita Chhabra and Rishav Chhabra in favour of defendant no.1 Radhey Lal Jeswani executed on 15.5.2006, which was registered on 20.7.2006 in register no.1, at page no. 169/190, item no. 1609/3868; sale deed executed in favour of defendant no. 2 Sanjay Agarwal which is entered in register no.1, page no.191/212, item no. 1609/3969; sale deed executed in favour of defendant no.3 Smt. Hema Agarwal which is entered in the register no.1, at page no. 75/94, item no. 1609/3863 & sale deed executed in favour of defendant no.4 Sunil Kumar and defendant no.5 Mahendra Kumar which is entered in the register no.1, at page no. 49/74, item no. 1609/3862, all the above sale deeds which are relating to disputed house no. 329, new no.1358, Jhokan Bagh, Jhansi are declared null and *void ab-initio,* not binding on the plaintiff. An information to this effect be also sent to the concerned sub-registrar office.

(ii) A decree of permanent injunction is granted in favour of the plaintiff against the defendants, whereby, the defendants are forever restrained from interfering in the peaceful possession of the plaintiff and interfering in his rights as landlord, in house no.329, new no.1358, Jhokan Bagh, Jhansi, of which the plaintiff is the owner in possession, on the basis of above null and *void ab-initio* sale deeds.

128. Both the parties shall bear their respective costs of the appeals. Office is directed to prepare the decree accordingly.

129. Interim order, if any, stands vacated in both the appeals.

130. All interim applications, if pending, stands disposed of.

131. Original trial court record, if received, be sent back, forthwith.

132. This Court appreciates the efforts of Research Associate Mr. Rohit Mishra, in researching the relevant case laws on the controversy involved in this appeal.

(2025) 9 ILRA 238
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE AVNISH SAXENA, J.

First Appeal No. 152 of 2025

Rajeev Kumar Maheshwari ...Appellant
Versus
Smt. Kalpana Maheshwari ...Respondent

Counsel for the Appellant:
Ashutosh Pratap Singh, Manoj Kumar Singh

Counsel for the Respondent:
Mayank Kumar Agrawal, Saroj Giri

Issue for consideration
Benami Transaction

Headnotes
Benami transaction-Husband in the marriage is appellant-wife is respondent-Subject matter of the suit is property-property purchased by husband in name of his wife-seeks declaration that the property is his-impugned judgement was made ex parte against respondent-the vendor had not been examined.-Appellant asserting that the transactions were Benami-finding of admission by the vendor (not examined) to hold against appellant, who was urging to the contrary and having, had produced the documents from his Custody-was erroneous appreciation of the evidence before the Court-clearly one that comes within section 7 (1) (c) in the Act of 1988-remanded for trial afresh. **Appeal allowed.** (E-9)

Case Law Cited

Nil

List of Acts

1. Family Courts Act, 1988
2. Prohibition of Benami Property Transactions Act, 1988

List of Keywords

Transactions were Benami; erroneous appreciation of the evidence; section 7 (1) (c) in the Act of 1988

Appearances of parties

Counsel for Appellant(s) : Ashutosh Pratap Singh, Manoj Kumar Singh
Counsel for Respondent(s) : Mayank Kumar Agrawal, Saroj Giri

(Delivered by Hon'ble Arindam Sinha, J.)

1. Husband in the marriage is appellant. He filed suit in respect of property purchased by him in name of his wife. The spouses have fallen out. The suit is for declaration that the purchase is not hit by subsequent amendment w.e.f., 1st November, 2016 to Prohibition of Benami Property Transactions Act, 1988.

2. Mr. Ashutosh Pratap Singh, learned advocate appears on behalf of appellant and Mr. Saroj Giri, learned advocate for respondent. Having heard them it appears there was application dated 25th March, 2023 made by respondent (wife) under rule 11 in order VII, Code of Civil Procedure, 1908. Then came impugned judgment dated 24th January, 2025. The judgment says, the plaint seeking relief under section 34 in Specific Relief Act, 1963 stands rejected by invoking section 7 of Family Courts Act, 1984 and sections 3 and 4 in Prohibition of Benami Property Transactions Act, 1988.

3. It is not necessary for us to take a view on interpretation of section 3 in the Act of 1988 as it stood prior to 1st November, 2016. While Mr. Singh submits that the property belongs to his client, Mr. Giri submits, the purchase was made in name of his client, as for her benefit.

4. Mr. Singh has relied on clause (c) under sub-section (1) in section 7 of Family Courts Act, 1988. The clause is reproduced below.

"7 (1) (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them"

In the suit husband is petitioner (plaintiff). The wife is respondent. Subject matter of the suit is property, which appellant says he purchased in name of respondent. Accordingly, he seeks declaration that the property is his. Respondent says the property was purchased for her benefit. Thus, the suit or proceedings between the parties, who are married, is in respect of property, which one of the parties is claiming to it be his and the other to be purchased for her benefit. The suit, in our considered view, is clearly one that comes within section 7 (1) (c) in the Act of 1988. Moreover the Family Court did acknowledge the position of law as would appear from a passage from official English translation of impugned judgement, reproduced below.

"In brief, the facts of the suit are that the plaintiff and defendant are husband-wife. They were married as per Hindu rites. The subject matter of the aforesaid suit, arose out of the marital relationship of the husband-wife and provisions of the Family Courts Act apply to both the parties."

5. As we have noticed, respondent had filed application questioning

maintainability of the petition/suit. However, instead of framing issue of maintainability, the learned Judge framed one on the merits and proceeded to dismiss the suit. In doing so, the learned Judge held that vendor in the sale deeds had admitted receiving the consideration from respondent, whereafter the learned Judge said that the vendor had not been examined. Admission by a party can amount to proof for establishing a fact. In this case, impugned judgement was made ex parte against respondent. The vendor had not been examined. Appellant, who was petitioner/plaintiff was asserting that the transactions were Benami. In such circumstances, finding of admission by the vendor (not examined) to hold against appellant, who was urging to the contrary and having, had produced the documents from his custody, in our view was erroneous appreciation of the evidence before the Court. Another paragraph from aforesaid official English translation of impugned judgement is reproduced below.

"From the perusal of the file, it is evident that the defendant is absent, and due to her absence, the proceedings of the suit have been proceeded against her ex parte. The seller of the sale deed, Shri Kishan Pal Gupta, has admitted receiving the consideration for the property sold, amounting to Rs. 80,000/- from the defendant. Furthermore, the seller, Shri Kishan Gopal Gupta, has not been examined as witness in the instant case nor, has his statement been recorded. Furthermore, the plaintiff is not a witness in the sale deed of the disputed property. In the instant case, the plaintiff has filed affidavits of Som Prakash as PW-02, and Mohan Babu Agrawl as PW-03, but neither are witnesses in the sale deed of the disputed property, nor has any transaction for the consideration of the property sold taken place before these two witnesses. The present suit is civil in nature."

6. For reasons aforesaid impugned judgement reversed in appeal. The petition (suit) is remanded for trial afresh. Respondent has appeared and therefore will be entitled to contest in the hearing on remand. We request the Family Court to proceed with the adjudication expeditiously, without granting unnecessary adjournments.

7. We find in impugned judgment, reference to suit no. 150 of 2021 filed by appellant against respondent and pending in the Court of Civil Judge, Firozabad. Mr. Singh submits, the suit is for permanent injunction filed in his client?s capacity as tenant in the premises, to resist eviction by respondent wife. This fact and the consequences in law must also be decided by the Family Court. The Family Court has before it, the subsequent suit filed. Provisions in section 10 of the Code will not be applicable because the former suit is for protection against eviction while the latter is for declaration of title. Appellant has apparently put forward inconsistent claims and whether he can prosecute for relief on them, the Family Court will have to decide.

8. The appeal is allowed and disposed of.

(2025) 9 ILRA 240
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 368 of 2013

Dr. Ila Gupta ...Appellant
Versus
Om Prakash Gupta & Anr. ...Respondents

Counsel for the Appellant:
Rohan Gupta

Counsel for the Respondents:
Dinesh Singh, Jawahir Yadav, Rajeshwar Yadav, Anil Kumar Pandey, Awadhesh Kumar Malviya

Issue for Consideration

Matter pertains to whether the plaintiff - appellant could establish that disputed house though standing in the name of her paternal uncle, defendant was in fact purchased by him in a fiduciary capacity and for her benefit, thereby exempting the transaction from bar contained in Section 4(1) of Benami Transactions (Prohibition) Act, 1988, or whether said transaction was a benami transaction hit by statutory prohibition under said Act.

Headnotes

Uttar Pradesh Awas Evam Vikas Parishad Act, 1965 - s. 88 - Benami Transactions (Prohibition) Act, 1988 - ss. 2(a), 3, 4 - Specific Relief Act, 1963 - ss. 34, 41 - Code of Civil Procedure, 1908 - s. 34 - The plaintiff - appellant, instituted Original Suit No. 804 of 2010 before Civil Judge (Senior Division), Ghaziabad, seeking a declaration of ownership, possession, and permanent injunction in respect of disputed house asserting that though the property was purchased in the name of her paternal uncle, defendant no.1, it was actually acquired from her own earnings and savings and that defendant held same in a fiduciary capacity for her benefit - It was averred that plaintiff, being employed as a medical practitioner, had remitted substantial funds for purchase and construction of said property, whereas defendant's name was used merely for convenience due to his seniority and familial relationship - Subsequently, defendant asserted exclusive ownership, denied plaintiff's right, and attempted to alienate the property - Defendants contested the suit contending that sale deed stood in defendant's name, plaintiff had no locus standi or ownership interest, and the claim was barred u/s 4(1) of Benami Transactions (Prohibition) Act, 1988 - Trial court dismissed suit, holding the transaction to be benami and not protected under any fiduciary exception, leading to instant First Appeal u/s 96 C.P.C. before High Court.

Held: It stands established that disputed house was valued at about ₹30 lakhs, whereas plaintiff contributed only ₹ 8.45 lakhs, which defendant no.1 asserts was a loan taken for purchase of disputed house - Allotment and subsequent sale deed were executed exclusively in favour of defendant no.1, who paid entire consideration to defendant no.2 - Possession was also delivered to defendant no.1 pursuant to lease agreement dated 11.12.2006 - Evidence establishes that plaintiff and defendant no.1 were not residing together, defendant was not dependent on plaintiff and as a retired Central Government pensioner, had sufficient means, was living in his own house and though ill, was not mentally incapacitated - No HUF existed between them, plaintiff being married having her own family and neither a lineal descendant nor property of defendant would have devolved on plaintiff upon his death - Consequently, no fiduciary relationship is proved - While defendant no.1 admitted certain financial transactions existed between him and plaintiff and his daughter had taken money from plaintiff, which was returned subsequently, such transactions alone do not establish a fiduciary capacity vis-à-vis the plaintiff - Since plaintiff did not pay entire consideration for disputed house, she cannot be regarded as its true owner - It is neither a case of joint purchase nor a situation where defendant no.1 was minor or financially incapable at the time of acquisition - Defendant no.1 has denied any love or affection towards plaintiff and admitted absence of mutual trust - There is no written contract between the parties, hence, burden lay entirely on plaintiff to establish her ownership, which she has wholly failed to prove - Defendant no.1 is the lawful owner in possession of disputed house, which is not a benami property of plaintiff - As plaintiff's claim does not fall within exceptions u/s 4(3) of Benami Transactions (Prohibition) Act, 1988, suit is barred by Section 4(1) - Trial court committed no illegality in dismissing plaintiff's claim for possession and declaration regarding execution of sale deed by defendant no.2 and rightly decreed suit only to extent of ₹8,46,865/- with

6% interest per annum from date of payment to defendant no.1 until realization - Appeal is devoid of merit and stands dismissed. [Paras 30, 35, 36, 39] (E-13)

Case Law Cited

Pushpalata v. Vijay Kumar (Dead) through LRs and others, **2022 SCC OnLine SC 1152;** Mangathai Ammal (Died) Through Lrs. and others v. Rajeswari and others, **(2020) 17 SCC 496;** Marcel Martins v. M.Printer and others, **(2012) 5 SCC 34 - relied on**

List of Acts

Uttar Pradesh Awas Evam Vikas Parishad Act, 1965; Benami Transactions (Prohibition) Act, 1988; Specific Relief Act, 1963; Code of Civil Procedure, 1908

List of Keywords

First Appeal under Section 96 C.P.C.; Declaration, possession and permanent injunction; Registered sale deed; Benami transaction; ss. 4(1), 4(3)(b) of Benami Transactions (Prohibition) Act, 1988; Paternal uncle; Fiduciary capacity / fiduciary relationship; Hindu Undivided Family; Real owner; Beneficial ownership; Bar under the statute; Statutory prohibition; Plaintiff's financial contribution; Burden of proof; Onus to prove ownership; Documentary and oral evidence; Unsustainable in law; Ownership not established; Benami prohibition applicable; Appeal devoid of merit; Dismissed with costs; Decree to be prepared accordingly; Trial court's judgment affirmed.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 368 of 2013

From the Judgment and Decree dated 06.4.2013 passed by the Additional Civil Judge (Senior Division) Court no.4, Ghaziabad in Original Suit No. 1485 of 2006

Appearances for Parties

Advs. for the Appellant:
Rohan Gupta

Adv. for the Respondent:
Dinesh Singh, Jawahir Yadav, Rajeshwar Yadav, Anil Kumar Pandey, Awadhesh Kumar Malviya

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

1. The instant first appeal under section 96 C.P.C. has been preferred by the plaintiff against judgment and decree dated 06.4.2013 passed by the Additional Civil Judge(Senior Division) Court no.4, Ghaziabad in Original Suit No. 1485 of 2006 Dr.Ila Gupta vs. Om Prakash Gupta and another, whereby the plaintiff 's suit for the main relief of declaration, permanent injunction and possession, regarding the flat no. 2C/322, Sector 2C, Vasundhara Scheme, Ghaziabad, has been dismissed.

Plaint case

2. The plaintiff- appellant filed a suit in the trial court with the averments that the defendant no.1 Omprakash Gupta was her paternal uncle, she regarded him immensely and had full faith in him. The defendant no.1 contacted her in the month of January, 2005 and informed her that the defendant No.2 Uttar Pradesh Awas Evam Vikas Parishad had constructed in Vasundhara Scheme, Ghaziabad duplex houses of high income category(HIG), which were semi-finished, which were available for allotment and if, she desired, then she can apply for allotment for a house in the above scheme. Since, she was busy in her medical profession and was unable to spare time to move an application for allotment in the above scheme, as such, she requested the defendant no.1 to move an application for allotment of house in the above scheme on her behalf, which was accepted by the defendant no.1. Since she trusted defendant no.1 immensely, she accepted the proposal of defendant no.1 and as such, consented that defendant no.1 may make an application for allotment of house in the above scheme on her behalf, in his own name. It is also the case of the

plaintiff that being her real paternal uncle, the defendant no.1 was in a fiduciary capacity. Thereafter, the defendant no.1, for the benefit of plaintiff, moved an application number 1348 on 23.1.2009 for allotment of HIG, semi-finished duplex house in the above scheme, by making an application in the office of defendant no.2, accompanied by registration amount of ₹ 85,000/- paid by draft no. 035788 dated 23.1.2005, drawn on Canara Bank, Vivek Vihar, New Delhi. The amount of ₹ 85,000/- and the commission of demand draft of ₹ 192/- was paid from the bank account no. 26547 of the plaintiff.

3. It is the case of the plaintiff that, the defendant no.2 vide letter no. 1323 dated 23.2.2005 intimated defendant no.1 that, he had been allotted the above house, having estimated cost of ₹ 16.90 lakhs and 50% of that cost amounting to ₹ 7.60 lakhs was to be deposited by 30.4.2005. Thereafter, the plaintiff got issued a demand draft no. 8077363 of ₹ 7.60 lakh dated 2.4.2005 drawn on Canara Bank, Vivek Vihar, Delhi, in favour of defendant no.2. The demand draft was issued from the savings bank account no. 26547 of the plaintiff and the commission of rupees 1,673/- was also debited from the above bank account. The bank draft of ₹ 7.60 lakhs was given to the defendant no.1, who deposited it on 28.4.2005 in the Ghaziabad office of the defendant no.2. Thereafter, on 17.11.2005 the office of the defendant no.2 informed vide letter no. 11203, that house number 2C/322, Sector 2C, Vasundhara, Ghaziabad had been allotted.

4. It is the case of the plaintiff that the above house, was purchased for her benefit, by defendant no.1, who was in a fiduciary capacity vis-a-vis the plaintiff, the registration amount and 50% of the cost of the house was also borne by the plaintiff, the real owner and beneficiary of the house was the plaintiff, the defendant no.1 was a mere benami holder of the above house, who had no concern with the ownership of the house.

5. It is the case of the plaintiff that subsequently, after the allotment of the disputed house in favour of defendant no.1, the intention of defendant no.1 turned malafide and in order to have illegal gain, he began to show that he was the owner of the disputed house and denied plaintiff's ownership, whereas, the plaintiff was the real beneficiary and owner, as such, she was entitled to get the sale deed of the disputed house executed in her favour from defendant no.2. It is the specific case of the plaintiff, that the defendant no.1 had no right, title and interest in the disputed house.

6. It has been further averred by the plaintiff that she was not informed about the subsequent instalments of the house to be paid to defendant no.2, by the defendant no.1 intentionally and later on, she became aware that without her consent and knowledge, the defendant no.1 had deposited instalments with defendant no.2. When the intention of the defendant no.1 became apparent to plaintiff, then she gave a legal notice on 15.6.2006 to the defendant no.1 and 2, which was also under section 88 of the Uttar Pradesh Awas Evam Vikas Parishad Act, a copy of which was also sent to the Commissioner and Additional Commissioner of defendant no.2, which were served on the defendant's on 19.6.2006.

7. The plaintiff filed the suit for the following reliefs:-

(i) by a decree of declaration, the plaintiff be declared the real allottee of house no. 2C/322, Sector 2C, Vasundhara

Scheme, Ghaziabad, allotted by defendant no.2 and was also entitled to get the sale deed executed and registered in her favour.

(ii) by decree of declaration it be declared that the lease agreement dated 19.8.2006 executed by defendant no.2 regarding the disputed house, was null and void and the possession of the disputed house handed to defendant no.1 was also illegal and void.

(iii) If the relief claimed above, was granted by the court, then the defendant no.2 be directed to register the name of the plaintiff, as allottee of the disputed house, in its record and after receiving the balance consideration from the plaintiff, the sale deed be also executed and registered in favour of the plaintiff.

(iv) If the relief claimed in clause 1 and 2 was not granted to the plaintiff, then the alternate relief of refund of money of ₹ 8,46,865/-, which was paid by the plaintiff for purchasing the disputed house, along with interest @12% per annum w.e.f. 23.1.2005 till the date of actual refund, be granted to the plaintiff against the defendant no.1.

(v) by decree of permanent injunction granted in favour of the plaintiff against the defendant no.1, the defendant no.1 be restrained from selling, alienating or transferring the possession of the disputed house.

(vi) by decree of the court the actual possession of the disputed house be also given to the plaintiff from defendant no.1

(vii) the plaintiff be also awarded mesne profit at the rate of ₹ 10,000/- per month of the disputed house from the defendant no.1 during the pendency of the suit, till it's actual possession was not received by the plaintiff, the court fees on it will be paid at the time of execution.

(viii) The costs of the suit be also awarded to the plaintiff against the defendant's.

Defendant no.1's case

8. The defendant no.1 Omprakash Gupta filed his written statement in the trial court in which he denied the plaint case. He submitted that the plaintiff informed him that the defendant no.2 is constructing HIG semi-finished houses, which are also reserved for retired Central government employees and as such, he should apply for allotment in the above scheme. The defendant further submitted that he believed the information provided by the plaintiff and as such, applied for allotment of house in the above scheme of the defendant no.2. He further submitted that since he retired from the post of civil engineer in CPWD, after service of 36 years, he was well aware that the property was expensive. He further submitted that initially he resided alone, but after the recent marriage of his son, the house had insufficient accommodation, as such, he was in need of a large house for accommodating his family and keeping in view the needs of his family, he had applied for allotment of house in the housing scheme of defendant no.2. He further submitted that there was no necessity of getting house allotted through the plaintiff, because she was a 45 year old woman. He further submitted that he has not committed any fraud upon the plaintiff.

The plaintiff had no requirement of the disputed property as such, why he would have applied for house in the name of plaintiff. He specifically averred that since he was in need of a large house as such, he had applied for allotment of that house. He further submitted that the plaintiff had assured him of her financial support, for acquiring the disputed house, if required by him.

9. The defendant admitted that since he was busy in the marriage of his son from January 2005 to April 2005, and was unable to pay ₹ 7.60 lakhs as such, he had taken a short-term loan from the plaintiff of that amount and had deposited it with defendant no.2. He admitted that the defendant no.2 had informed vide letter no. 11203 dated 17.11.2005 that house number 2C−322 in Vasundhara has been allotted to him. He further averred that the plaintiff was no need of a house because she was having a two storeyed building no. B-4, Chandranagar, Ghaziabad, built in an area of 650 square yard, having a market value of ₹ 3 crores, the first floor of which was lying vacant. Besides this, the plaintiff was having an HIG flat no.3, Highway Apartment, in Ghazipur, which was in the name of her husband Ashok Gupta. The plaintiff wanted to usurp the disputed house illegally. The plaintiff was not the owner of the disputed house because it was allotted to him and the consideration of the disputed house was also paid by him. He further averred that half amount of consideration amounting to ₹ 1,354,560/- was paid by him to the defendant no.2 and as such, a lease agreement had been executed by defendant no.2 in his favour on 19.8.2006, on the basis of which he was entitled to the possession of the disputed house. The plaintiff was neither the allottee nor was in possession of the disputed house as such, the suit was barred by section 34 and 41 of the Specific Relief Act. The plaintiff filed the suit to harass him because he was an old and ill person. The plaintiff had got no cause of action to file the suit and was not entitled to get any relief from the court.

10. The defendant no.1 filed additional written statement in which, it was averred that after completing all the formalities regarding the disputed house and after depositing half amount of consideration of ₹ 13,54,560/- with defendant no.2, after paying stamp duty of rupees 2.71 lakhs, the defendant no.2 had executed a lease agreement on 19.8.2006 in his favour, on the basis of which he had obtained the physical possession of the disputed house on 7.12.2006, which was prior to the filing of the suit. It was further averred that after paying the whole consideration, the defendant no.2 had executed a sale deed on 31.3.2008 in his favour and in view of these facts and circumstances, the plaintiff was not entitled to any relief.

Written Statement of defendant no.2

11. The defendant No. 2 Uttar Pradesh Awas Evam Vikas Parishad filed its written statement in which it was admitted that the consideration had been deposited by defendant no.1. It was further disclosed that vide its letter no. 1323 dated 23.2.2005 the defendant no.1 was informed to deposit 7.60 lakhs till 30.5.2025, which was deposited by defendant no.1 within time. The above amount was paid by defendant no.1 by a demand draft no. 807363 drawn on Canara Bank, Vivek Vihar, New Delhi. The challan of deposit was signed by Ashok Kumar. It was further averred that house no. 2C−322, Vasundhara, Ghaziabad

was allotted on 17.11.2005 by it, to defendant no.1. It was admitted that the plaintiff had sent notice dated 15.6.2006 to it. It was further averred that on 19.8.2006 the defendant no.1 arrived at the office of defendant no.2 and had got executed an agreement of the disputed house. It was further disclosed that as per its record, defendant no.1 had applied for the registration of the disputed house, which was allotted to defendant no.1 and also on 19.8.2006 a lease agreement was executed by defendant no.2, in favour of defendant no.1. It was specifically averred that in the records, the disputed house had not been allotted to the plaintiff as such, no amount can be deposited by the plaintiff, with it. With these submissions, it was averred that the plaintiff had no right to file the suit, which was liable to be dismissed with special costs.

12. The trial court on the basis of the pleadings of the parties, framed the following issues, which read as under:-

(i) Whether the plaintiff was the allottee of house number 2C/322, sector 2C, Vasundhara scheme, Ghaziabad and was entitled to get the sale deed of this property executed and registered in her favour from defendant no.2?

(ii) Whether the defendant no.1 was the benami holder of disputed house? If yes, it's effect?

(iii) Whether the suit was barred by section 34 and 41 of the Specific Relief Act?

(iv) Whether any cause of action had arisen?

(v) Whether the suit was undervalued?

(vi) Whether the court fees paid was insufficient?

(vii) Whether the suit was barred by section 3 and 4 of the Benami Transactions(Prohibition) Act, 1988?

(viii) Whether the plaintiff was entitled to get any other relief?

(ix)Whether on the basis of plaint averments, the plaintiff was entitled to get the possession of the disputed property?

13. During trial, the plaintiff Dr Ila Gupta examined herself as PW-1 and defendant no.1 Omprakash Gupta examined himself as DW-1.

14. The trial court vide impugned judgment and decree dated 6.4.2013 dismissed the plaintiff's suit.

15. The trial court while deciding issue no.1 and 9 concluded that only a partial amount of ₹ 7.60 lakhs and ₹ 85,000 had been paid by plaintiff towards consideration of the disputed house, which was admitted by defendant no.1, the disputed house was allotted to the defendant no.1 and the plaintiff had failed to prove, that the disputed house was allotted for her benefit. The trial court concluded that since the lease agreement was executed by defendant no.2 in favour of defendant no.1 as such, the defendant no.1 will be deemed to be the owner of the disputed house, but the plaintiff was entitled to receive ₹ 7.60 lakhs and 85,000/- with interest from defendant no.1. Accordingly, issue no.1 and 9 were decided.

16. The trial court while disposing issue No.2 and 7 concluded that in section

3(2)(a) of the Benami Transactions (Prohibition) Act 1988, only the wife and unmarried daughter are covered within the definition of benami transaction, the plaintiff does not fall within that definition, as such, in the facts of the case, section 3 and 4 of the Act were held in-applicable. Issue No.2 and 7 were decided in the negative.

17. The trial court concluded that the defendant failed to prove that the suit was barred under section 34 and 41 of the Specific Relief Act, as such, issue no.3 was decided against the defendants.

18. The trial court, concluded that the plaintiff had cause of action to file the suit because she had paid ₹ 7.60 lakh and 85,000/- towards the allotment of the disputed house, which she was entitled to get back. On this reasoning, the trial court decided issue no.4 in favour of the plaintiff. Issues no.5 and 6, regarding valuation of the suit and sufficiency of court fees paid, were decided by the trial court on 18.4.2009. Issue no.8 was partly decided in favour of the plaintiff by concluding that since she had paid an amount of ₹ 8,46,865/- to the defendant no.1 regarding the disputed house, as such she was entitled to this amount along with pendente-lite and future interest @ 6% per annum, in accordance with section 34 C.P.C. Regarding other reliefs, the suit was dismissed, aggrieved against which, the plaintiff filed the instant First Appeal under section 96 CPC.

19. Learned counsel for the plaintiff – appellant submitted that the defendant no.1 was in fiduciary capacity vis-a-vis the plaintiff, being the real paternal uncle of plaintiff, the plaintiff trusted the defendant and acting on the advice of the defendant, had consented to apply for the disputed house in the name of the defendant, because there was a 10 % quota for senior citizens in the Vasundhara scheme, as such, there was an understanding that the defendant will apply for the house on behalf of the plaintiff, the plaintiff being the real owner, the funding for the house will be done by the plaintiff and the defendant will hold the house, for the benefit of the plaintiff but, after allotment of the house to the defendant, his intention became malafide and thereafter, to usurp the house illegally, the defendant began to exert his ownership rights in the house, which was illegal. Learned counsel submitted that the defendant no.1 was the benami owner of the disputed house. Since, the defendant was in a fiduciary capacity vis-a-vis the plaintiff, the bar of Benami Transactions (Prohibition) Act,1988 was not attracted in this case. Learned counsel further submitted that the trial court erred in dismissing the plaintiff's suit. With these submissions, it was prayed that the instant appeal be allowed and the suit be decreed. In support of his submissions learned counsel has relied upon the case law ***Marcel Martins vs. M.Printer and others(2012)5 SCC 342 and Pushpalata vs. Vijay Kumar (Dead) through LRs and others 2022 SCC OnLine SC 1152.***

20. Per contra, learned counsel for the defendant – respondent no.1 submitted that the defendant was the real owner of the disputed house because a substantial part of the consideration was paid by the defendant. A loan was taken from the plaintiff initially for making an application before the defendant no.2, for applying the house, which was repaid by the defendant. Learned counsel submitted that the suit was barred by the provisions of Benami Transactions (Prohibition) Act,1988.

Learned counsel further submitted that the allotment was in favour of the defendant and possession of the disputed house was also with the defendant and further, the sale deed was also executed in favour of the defendant, as such, it cannot be said that the defendant was the benami holder of the disputed house. Learned counsel further submitted that the plaintiff and defendant never trusted each other, only because some financial transactions took place between them, it cannot be presumed that the defendant was in a fiduciary capacity vis-a-vis the plaintiff. Learned counsel further submitted that defendant was not financially dependent on plaintiff, was having his own income from pension and interest and had also invested his savings and also arranged funds from friends, relatives and family members, for purchasing the house. With these submissions, it was prayed that the instant appeal be dismissed.

21. On the basis of the arguments of the learned counsel of the parties, the following issues arise for determination, in this appeal:-

(1) Whether the disputed house was purchased by defendant no.1, for the benefit of plaintiff ?

(2) Whether the defendant no.1 was the benami owner of the disputed house, the real owner being the plaintiff ?

(3) Whether defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff ?

(4)Whether the suit of the plaintiff was barred by section 4(1) of the Benami Transactions (Prohibition) Act, 1988 ?

22. The plaintiff Dr.Ila Gupta examined herself as PW-1 in the trial court. In the examination- in- chief, she proved the pleadings of the plaint and reiterated her plaint case. She stated that defendant no.1, being her real paternal uncle was in a fiduciary capacity with her. She deposed that an amount of ₹ 7.60 lakhs and 85,000/- were paid by her towards the consideration of the disputed house to the defendant no.2 through demand draft, for which rupees192/- and 1,673/-were paid towards demand draft charges, in total, an amount of rupees 8,46,865/- was paid by her. She further deposed that the disputed house was purchased for her benefit, the defendant no.1 was only a benami owner of the disputed house, who had got no concern with the disputed house. She denied that the above consideration deposited by her with defendant no.2, was a loan provided by her to the defendant no.1. She further deposed that the disputed house was not reserved for retired Central government employees, but it was reserved, only for serving employees. She further deposed that the defendant no.1 was not having any requirement of a larger house because, the defendant no.1's son Sajal was working in a foreign country as such, the house, presently in which the defendant no.1 was residing, was sufficient for his requirements because the defendant no.1 had let out a room of that house, which proved that the defendant no.1 was not having any requirement of a larger house. She further deposed that house no. B-4,Chandra Nagar belonged to her father-in-law K.L. Gupta.

23. The plaintiff in her cross-examination admitted that she's the joint owner of a shop with her husband, situated in Palika Bazar, GT road, Ghaziabad, which was purchased in the year 1986 or

1987, from her own funds. She admitted that when the registration form of the disputed house was filled, at that time, she was residing at B-4, Chandranagar, Ghaziabad, which was at a distance of about 3-4 km from Vivek Vihar. She disclosed that Vasundhara was at a distance of about 5 km from her house. She admitted that the defendant no.1's house was at a distance of about 30 km from her house. She admitted that the sale deed of the disputed house had been executed in favour of defendant no.1. She denied that the part consideration of the disputed house was paid by her as loan, to the defendant no.1. She also admitted that the defendant no.1 had paid the remaining consideration to the defendant no.2 and had thereafter, got executed the sale deed in his favour from defendant no.2. She also admitted that the possession of the disputed house had been given by defendant no. 2 to defendant no.1. She admitted that there were financial transactions between her and defendant no.1 and his wife.

24. The defendant no.1 Omprakash Gupta examined himself as DW-1 in the trial court. In his examination-in-chief he reiterated the submissions made by him in his written statement. He deposed that since he was ill, as such, the plaintiff had assured him that regarding the purchase of the disputed house, she will help in completing all the formalities. He further deposed that since he worked as a civil engineer for 36 years in CPWD, as such, he was fully aware that the disputed house was very expensive. He was residing at that time in a LIG house of DDA, which was very small, keeping in view his requirements, as such, on the assurance of the plaintiff, that she will provide the necessary loan, had applied for allotment of house reserved for retired Central government employees on 23.1.2005, after taking loan of ₹ 85,000/- from the plaintiff. He further deposed that since he was ill at that time, as such, the allotment form was filled and deposited by the plaintiffs husband, with defendant no.2. He further deposed that he had obtained ₹ 7.60 lakhs on loan from plaintiff, which was deposited through demand draft by plaintiffs husband, with defendant no.2 on 29.4.2005. He further deposed that previously also there were financial transactions between him and the plaintiff, the plaintiff had given a loan of ₹ 59,000/- to his daughter Ruchi Gupta for purchasing Shivalik Apartment in Patparganj on 18.8.2002, which were subsequently returned by his daughter, by cheque to the plaintiff. He further deposed that half of the total consideration of ₹ 27,02,120/-, which amounts to ₹ 13,54,560/-, along with stamp paper of rupees 2.71 lakhs were deposited by him with defendant no.2 for executing lease agreement, which was executed on 19.8.2006 by defendant no.2 in his favour and also on 11.12.2006 the possession of the disputed house was also given to him by defendant no.2. He further deposed that after payment of the whole consideration, on 31.3.2008, the sale deed of the disputed house was executed by defendant no.2 in his favour. He further deposed that about ₹ 25 lakhs was paid by him towards the consideration of the disputed house. The plaintiff had no concern with the disputed house.

25. DW-1 deposed in cross-examination that the marriage of his son was solemnised on 28.4.2005, and after that, his son could not have resided with him, because his house was inadequate for accommodating all of them. He further deposed that he had no affection for the plaintiff, who never trusted him. He also never trusted the plaintiff. He admitted

after reading paper no. 9 C that there was no reservation for retired Central government employees in the allotment of house. He deposed that the above fact of reservation of house was disclosed to him by the plaintiff. The house was reserved for senior citizens, plaintiff was not a senior citizen. He disclosed that when he had applied for allotment of the disputed house, at that time he was retired person, who was having income from pension and interest. He also disclosed that he had deposited money in the MIS scheme of Post Office, as well as bank. He also disclosed that he was paying income tax but could not disclose, when for the last time, he had filed his income tax return. He disclosed that his chartered accountant used to file income tax returns on his behalf, a copy of which was given to him. He disclosed that at that time, his son was employed as software engineer in Bangalore, who was getting annual salary in excess of ₹ 6 lakhs. He disclosed that the remaining consideration was paid by him, after obtaining money from his son, daughter-in-law and daughter Ruchi Gupta and some amount was also given by his wife. He had also obtained some money from his son-in-law and his friends. He disclosed that at present his son was living in the United Kingdom. He further disclosed that the disputed house was a duplex house, which was semi-finished.

26. The Apex Court in the case of Marcel Martins vs. M.Printer and others (2012) 5 SCC 342, while discussing the term fiduciary capacity mentioned in section 4(3)(b) of the Benami Transactions (Prohibition)Act,1988, held as under:-

"31. The expression "fiduciary capacity" has not been defined in the 1988 Act or any other statute for that matter. And yet there is no gainsaying that the same is an expression of known legal significance, the import whereof may be briefly examined at this stage.

32. The term "fiduciary" has been explained by Corpus Juris Secundum as under:

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word 'fiduciary', as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee with respect to the trust and confidence involved in it and the scrupulous good faith and condor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate."

33.Words and Phrases, Permanent Edn. (Vol. 16-A, p. 41) defines "fiducial relation" as under:

"There is a technical distinction between a 'fiducial relation' which is more

correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and 'confidential relation' which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

34.Black's Law Dictionary (7th Edn., p. 640) defines 'fiduciary relationship' thus:

"Fiduciary relationship. –A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships– such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client–require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

35.Stroud's Judicial Dictionary explains the expression "fiduciary capacity" as under:

"Fiduciary capacity. –An administrator who [had] received money under letters of administration and who is ordered to pay it over in a suit for the recall of the grant, holds it 'in a fiduciary capacity' within the Debtors Act, 1869 so, of the debt due from an executor who is indebted to his testator's estate which he is able to pay but will not, so of moneys in the hands of a receiver, or agent, or manager, or moneys due on an account from the London agent of a country solicitor, or proceeds of sale in the hands of an auctioneer, or moneys which in the compromise of an action have been ordered to be held on certain trusts or partnership moneys received by a partner."

36.Bouvier's Law Dictionary defines "fiduciary capacity" as under:

"What constitutes a fiduciary relationship is often a subject of controversy. It has been held to apply to all persons who occupy a position of peculiar confidence towards others, such as a trustee, executor, or administrator, director of a corporation or society, medical or religious adviser, husband and wife, an agent who appropriates money put into his hands for a specific purpose of investment, collector of city taxes who retains money officially collected, one who receives a note or other security for collection. In the following cases debt has been held to be not a fiduciary one : a factor who retains the money of his principal, an agent under

an agreement to account and pay over monthly, one with whom a general deposit of money is made."

37. We may at this stage refer to a recent decision of this Court in CBSE v. Aditya Bandopadhyay [(2011) 8 SCC 497] , wherein Raveendran, J. speaking for the Court in that case explained the terms "fiduciary" and "fiduciary relationship" in the following words : (SCC pp. 524-25, para 39)

"39. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

It is manifest that while the expression "fiduciary capacity" may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-a-vis the respondent-plaintiffs."

27. The Apex Court in the case of ***Mangathai Ammal(Died) Through Lrs. and others vs. Rajeswari and others(2020)17 SCC 496,*** discussing the law governing benami transactions, held as under:-

"7.1. In Jaydayal Poddar [Jaydayal Poddar v. Bibi Hazra, (1974) 1 SCC 3] it is specifically observed and held by this Court that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold. It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an interference of that fact. In para 6 of the aforesaid decision, this Court has observed and held as under : (SCC pp. 6-7)

"6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances : (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale."

7.2. In Bhim Singh [Bhim Singh v. Kan Singh, (1980) 3 SCC 72] this Court in para 18 observed and held as under : (SCC p. 84)

"18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus : (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money; and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

7.3. In P. Leelavathi [P. Leelavathi v. V. Shankarnarayana Rao, (2020) 19 SCC 816] this Court held as under : (SCC OnLine SC para 26)

"26. In Binapani Paul case [Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100] , this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held

that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in Valliammal v. Subramaniam [Valliammal v. Subramaniam, (2004) 7 SCC 233] that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale , SCC p. 7, para 6.)

7.4. After considering the aforesaid decision in the recent decision of this Court in P. Leelavathi , this Court has again reiterated that to hold that a particular transaction is benami in nature, the aforesaid six circumstances can be taken as a guide."

28. The Apex Court in the case of ***Pushpalata vs. Vijay Kumar(Dead) through LRS and others 2022 SCC OnLine SC 1152,*** where the claim was that the property is benami, elucidated the law as under:-

"22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh, where this court cited with approval extracts from Valliammal v. Subramaniam (supra):

"47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam [(2004) 7 SCC 233] wherein a Division Bench of this Court held:

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Ref to Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is

largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

*** *** ***

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case."

23. As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner- in cases which form the exception, under Section 4 (3) - has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:

"22. It is manifest that while the expression "fiduciary capacity" may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in

positions that are founded on confidence and trust on the one part and good faith on the other.

23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-a-vis the plaintiffs-respondents.

24. The first and foremost of the circumstance relevant to the question at hand is the fact that the property in question was tenanted by Smt. Stella Martins-mother of the parties before us. It is common ground that at the time of her demise she had not left behind any Will nor is there any other material to suggest that she intended that the tenancy right held by her in the suit property should be transferred to the appellant to the exclusion of her husband, C.F. Martins or her daughters, respondents in this appeal, or both. In the ordinary course, upon the demise of the tenant, the tenancy rights should have as a matter of course devolved upon her legal heirs that would include the husband of the deceased and her children (parties to this appeal). Even so, the reason why the property was transferred in the name of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of the plaintiffs that the defendant-appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis-a-vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was

holding the title to the property for the benefit of the plaintiffs.

25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-a-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Subsection 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant."

29. From the law laid down by the Apex Court in the case of ***Mangathai Ammal(supra)*** and ***Pushpalata(supra)*** it is clear that six circumstances- the source of the purchase money, possession of the property after purchase, motive of giving the transaction a benami colour, the position and relationship between the parties, custody of the title deeds after the sale and the conduct of the parties in dealing with the property after the sale, can be taken as a guide for determining whether the transaction was benami or not. It has been further held that the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale was benami or not. The Apex Court in the case of ***Marcel Martins(supra)*** has defined what is the meaning of fiduciary capacity.

30. It is apparent that the cost of the disputed house was about 30 lakhs, but only an amount of ₹ 8.45 lakhs has been paid by the plaintiff, which according to the defendant no.1 was the loan, which he had taken from the plaintiff, for purchasing the disputed house. It is also apparent that the allotment of the house was in favour of defendant no.1, who had also got executed the sale deed in his favour, after paying the whole consideration of the disputed house from defendant no.2. The possession of the disputed house was also handed to defendant no.1, in pursuance of the lease agreement executed by defendant no.2 in his favour on 11.12.2006.

31. Section 2(a), 3(1), 3(2)(a) and 4 of the Benami Transactions (Prohibition) Act, 1988, (hereinafter referred to as 'Act') reads as under:-

"2. Definitions- *In this Act, unless the context otherwise requires,-*

(a) "Benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

3. Prohibition of benami transactions- *(1) No person shall enter into any benami transaction.*

(2) Nothing in sub-section (1) shall apply to-

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter.

*** *** ***

4. Prohibition of the right to recover property held benami- *(1) No suit, claim or action to enforce any right in*

respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,-

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."

32. It is evident that as per section 4(1) of the above Act, a suit claiming any right in respect of any property held benami against the person in whose name the property is held, is not maintainable by a person claiming to be the real owner of such property, but this is not applicable, where the property is held as a coparcener in a Hindu undivided family(HUF) and where the property is held for the benefit of the coparceners of such family. It is also not applicable, where the person in whose name the property is held, is a trustee or other person standing in a fiduciary capacity and the property is held for the benefit of another person for whom he is trustee or towards whom he stands in such capacity.

33. It is admitted to both the parties that the plaintiff is not a coparcener of the Hindu undivided family(HUF) of defendant no.1 as such, the exemption available under section 4(3)(a) of the Act, is not applicable, in the facts and circumstances of this case.

34. Learned counsel for the plaintiff-appellant vehemently submitted that the plaintiff trusted defendant no.1, who is her real paterenal uncle, who was in a fiduciary capacity vis-a-vis the plaintiff and as such, the disputed property was purchased by defendant no.1 for the benefit of plaintiff and part consideration for purchasing the property, was also provided by the plaintiff. Learned counsel submitted that in view of this, the suit is not barred by the provisions of section 4(1) of the Act.

35. From the evidence on record, it is proved that plaintiff and defendant no.1 were not residing together, the defendant was not dependent on plaintiff, the defendant was retired central government pensioner, who was having sufficient income from pension and interest to sustain his livelihood, who was living in his own house, who was ill but was not mentally impaired, there was no Hindu undivided family(HUF) of which plaintiff and defendant were coparceners, the plaintiff was married having her own family, who was neither a lineal descendant of defendant nor the property of defendant would have devolved on plaintiff upon his death, because the defendant was having his own family, as such, in these

circumstances, it is not proved that the defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff. Although, defendant no.1 has admitted that there were financial transactions between him and the plaintiff and his daughter had taken money from the plaintiff, which was returned subsequently, but only on the basis of these financial transactions, it is not proved that defendant no.1 was in fiduciary capacity vis-a-vis the plaintiff.

36. It is also apparent that the plaintiff has only provided a part consideration of ₹ 8.45 lakhs for purchasing the disputed house, whereas the defendant no.1 has paid the remaining consideration of about ₹ 25 lakhs to the defendant no.2 for purchasing the disputed house. Since, in this case the whole consideration of the disputed house has not been paid by the plaintiff, she cannot be treated as the real owner of the house. It is not a case where the disputed house was purchased by the defendant jointly with the plaintiff, or the defendant no.1 was minor at the time of purchase of house, or was not having the financial capacity to purchase the disputed house. The defendant no.1 denied that he was having any love and affection for plaintiff and has also admitted that, there was no mutual trust between them. It is also apparent that, there is no written contract between the plaintiff and defendant no.1 as such, the whole burden was on the plaintiff to prove that she's the real owner of the disputed house, which she has utterly failed to prove.

37. In view of the above facts and as per the law laid down by the Apex Court in the case of ***Marcel Martins(supra),*** the plaintiff failed to prove that defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff, as such, the instant case does not fall within the exceptions mentioned in section 4(3) of the Act.

38. It is also proved that the plaintiff has only paid about 25% of the amount of consideration(Rs. 8.45 lakhs), the defendant no.1 is in possession of the disputed house, a sale deed has also been executed by the defendant no.2 in favour of defendant no.1 regarding the disputed house, there was no motive for purchasing the property benami, the plaintiff and the defendant no.1 resided separately and the defendant was not dependent on plaintiff for his livelihood, the defendant had sufficient financial means for purchasing the disputed house and the deficit, if any, was made good by borrowing the money from his friends, relatives and family members. It is also proved that the sale deed of the disputed house is in possession of the defendant no.1. It is also proved that the defendant no.1 neither expressly admitted nor acquiesced by his conduct, that the disputed house belonged to the plaintiff. When the above evidence is analysed in accordance with the law laid down by Apex Court in the case of ***Mangathai Ammal(supra)*** and ***Pushpalata(supra)*** then it is apparent that the plaintiff failed to prove that the alleged transaction was benami, and she was the real owner of the disputed house.

39. From the above analysis, it is proved that the defendant no.1 is the real owner in possession of the disputed house and the disputed house is not a benami property of plaintiff. Since, the plaintiff 's suit, does not fall within the exceptions specified in section 4(3) of the Benami Transactions (Prohibition) Act,1988, the plaintiff 's suit is barred by section 4(1) of the Act. The trial court has not committed any illegality in dismissing the plaintiff 's

suit for the relief of possession of the disputed house and for declaration that the sale deed of the disputed house be executed by defendant no.2 in her favour. The trial court has rightly decreed the plaintiff's suit partially against defendant no.1, for an amount of ₹ 8,46,865/- with interest @ 6% per annum from the date when this amount was given to the defendant no.1, till the actual date of realisation. Accordingly, this appeal is meritless and is liable to be dismissed.

40. **Accordingly, this appeal is dismissed.** Consequently, the impugned judgment and decree dated 06.04.2013 passed by the trial court in O.S. No. 1485 of 2006, is affirmed.

41. All pending applications, if any, stand disposed of.

42. Interim order, if any, stands vacated.

43. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

44. Office is directed to prepare the decree, accordingly.

(2025) 9 ILRA 260
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 381 of 2024

Smt. Archana Tyagi & Ors. ...Appellants
Versus
Yaduraj Narain ...Respondent

Counsel for the Appellants:
Shiv Sagar Singh

Counsel for the Respondent:
Ajay Kumar Singh, Ashish Kumar Singh

Issue for Consideration

Matter pertains to whether the donee, having constructed and operated a cinema hall on the land gifted conditionally by donor for that specific purpose, acquired full ownership rights upon fulfillment of condition, or whether the donor's successors retained a right to revoke the gift and reclaim possession of property on the ground that the donee subsequently demolished the cinema hall and commenced construction of a multiplex or commercial complex, allegedly in violation of terms of conditional gift deed.

Headnotes

Specific Relief Act, 1963 - ss. 38, 41 - Transfer of Property Act; 1882 - s. 126 - Plaintiffs - appellants being the legal heirs of late Pt. Parmanand Sharma, instituted Original Suit No. 434 of 2021 before the Civil Judge (Senior Division), Meerut, seeking a decree of declaration, possession, and permanent injunction in respect of land situated at Delhi Road, Meerut, originally gifted by their predecessor to late Yaduraj Narain, father of defendant, through two registered gift deeds dated 17.06.1968 and 18.06.1968, for the specific purpose of constructing and operating a cinema hall to serve the public - It was contended that donee accepted the gift and constructed the "Nandan Cinema Hall" thereon, which remained functional for decades, however, after its closure, defendant demolished the structure and commenced construction of multiplex and commercial complex, thereby acting contrary to stated purpose and violating condition of gift - Plaintiffs claimed that by such breach, gift stood revoked u/s 126 of Transfer of Property Act, 1882 and they were entitled to restoration of possession - On this, defendant contested the claim, asserting that condition of gift had been fully satisfied by constructing and operating cinema hall for over fifty years, that no

clause in deed provided for reversion and that subsequent redevelopment of land was within his ownership rights - Trial court dismissed the suit, holding that gift was absolute and irrevocable, prompting the plaintiffs to prefer instant First Appeal u/s 96 C.P.C. before High Court.

Held: It is apparent from gift deeds that sole purpose of gift was to enable donee to construct cinema hall on the gifted land, after taking due permission from concerned authorities, in accordance with bye-laws prevailing at that time and if such permission was not granted to the donee, then it was expressly agreed that gifted land would not be used for any other purpose and further if, the donee failed to construct the cinema hall, then donor would be entitled to take back gifted land - Donee after accepting the gift, duly obtained the requisite permission from concerned authorities, under the relevant byelaws and thereafter, started construction of cinema hall, which was completed in year 1974, which came to be known as Nandan cinema hall - Cinema hall remained functional till year 2021, when it was demolished for constructing a multiplex, keeping in view, the changing times and attitude/taste of viewers, who intended to visit cinema hall, otherwise the donee would not have survived in this business - The donee, having complied with gift conditions by constructing and operating a cinema hall on gifted land for nearly 47 years, cannot be said to have breached terms of gift - With the conditions fully satisfied, donor's successors have no right to revoke gift or reclaim possession - Donor stood divested of all ownership rights in the gifted land once compliance occurred - Consequently, as the lawful owner, donee cannot be restrained from demolishing the old cinema hall and raising a modern multiplex having some shops providing eatables to cinema goers and also affording some shopping opportunities to them - Thus, appeal has no merits and liable to be dismissed. [Paras 32, 36, 39] (E-13)

Case Law Cited

N.P. Saseendran v. N.P. Ponnamma and Others, **2025 SCC OnLine SC 626;** Sridhar and Another v. N. Revanna and Others, **(2020) 11 SCC 221;** Narmadaben Maganlal Thakker v. Pranjivandas Maganlal Thakkerand Others, **(1997) 2 SCC 255;** Renikuntla Rajamma (Dead) By Legal Representatives v. K. Sarwanamma, **(2014) 9 SCC 445;** Rajvir Singh v. Randhir Singh, **2024 SCC OnLine ALL 6235;** Asokan v Lakshmikutty and Others, **(2007) 13 SCC 210 - distinguished**

Annaya Kocha Shetty (Dead) through Lrs v. Laxmibai Narayan Satose Since deceased through Lrs. and Others, **2025 SCC OnLine SC 758;** R Thajudeen v. Tamil Nadu Khadi and Village Industries Board, **(2024) SCC OnLine SC 3037;** J Radha Krishna v. Pagadala Bharathi and Another, **2025 SCC OnLine SC 1447** - **referred to**

List of Acts

Specific Relief Act, 1963; Transfer of Property Act, 1882

List of Keywords

First Appeal u/s 96 C.P.C.; Permanent injunction; Possession and ownership rights; Registered gift deed; Conditional gift; Not a lease deed; Violated the terms conditions of gift deed; Mesne profits; Revocation of gift; Section 126 of Transfer of Property Act, 1882; Relationship of licensor and licensee; Interpretation of conditions of gift deeds; Fulfilment of condition; Revert back of gifted land to donor or his successors; Building plan; Meerut Development Authority; Reconstruction/ remodelling Nandan cinema hall; Purpose of gift; Gifted land will not be use for any other purpose/usage; Ownership rights in the gifted land; Donee and donor relationship; Construction and operation of cinema hall; Demolition; Multiplex / Shopping construction; Adverse possession; Perverse finding; Donor cannot claim back ownership and possession of gifted land.; Appeal dismissed as meritless; Impugned decree affirmed.

Case Arising From

ORIGINAL JURISDICTION: First Appeal No. - 381 of 2024

From the Judgment and Decree dated 16.03.2024 passed by the Court of Additional Civil Judge (Senior Division) - Second, Meerut in Original Suit No. 1510 of 2021

Appearances for Parties

Advs. for the Appellant:

Shiv Sagar Singh

Adv. for the Respondent:
Ajay Kumar Singh, Ashish Kumar Singh

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

1. The instant first appeal under section 96 C.P.C. has been preferred by the plaintiff against judgment and decree dated 16.3.2024 passed by the Court of Additional Civil Judge(Senior Division) - Second, Meerut in Original Suit No. 1510 of 2021 Archana Tyagi and others vs. Yaduraj Narain, whereby the plaintiffs suit for the recovery of possession, permanent injunction and mesne profits,regarding the land gifted by their predecessor Raghukul Narain, has been dismissed.

Plaint case

2. The plaintiff- appellants filed a suit in the trial court with the averments that their predecessor Raghukul Narain(donor), had executed a gift deed on 8.2.1968 regarding land situated in khasra No. 4352, having area of 1104 square yards, the details of which were mentioned in the schedule of the plaint, in favour of his nephew /defendant Yaduraj Narain(donee), on the defendant's request. The gift deed was registered on 24.2.1968 in the office of Sub-Registrar, Meerut. It is the case of the plaintiffs that the gift was conditional that the defendant would construct a cinema hall on the gifted land ,after taking due permission and if, the cinema hall could not be constructed, then the gifted land would revert back to the donor or his successors, whoever is alive. According to the plaintiffs, the defendant duly accepted the conditional gift.

3. It is the case of the plaintiffs that another gift deed was executed on 30.10.1968 , consisting one plot of land of area 466.66 square yards and the other plot of land of 35 square yards, the smaller plot was to be used as a passage and the whole land was situated in khasra No. 4352, Garh Road, near Sohrab Gate, Meerut. This gift deed was registered on 8.11.1968 in the office of Sub-Registrar, Meerut. Both the gifts were conditional that if, due to some reason, permission to construct cinema hall is not granted by the competent authorities or if, the building of cinema hall is not constructed, then the gifted land would revert back to the donor or his successors, whoever is alive, and the defendant would have no objection to it. It was further agreed that a small area of 35 square yards would be used as a passage by both the predecessors of plaintiffs and the defendant, which would not be taken back.

4. It is the case of the plaintiffs that in the year 2019 their predecessor late Rajeev Tyagi came to know, that the defendant intended to demolish the existing Nandan cinema hall and in its place, construct a multiplex/commercial complex for business purposes and for this, the defendant has submitted a building plan before the Meerut Development Authority for approval. The plaintiffs contended that their consent was not obtained for demolishing the existing Nandan cinema hall and in its place, constructing multiplex /commercial complex, which proves that the defendant has deliberately violated the conditions of the gift deed. Subsequently, Rajeev Tyagi gave a notice dated 7.8.2019 to the defendant, Vice-Chairman/Secretary, Meerut Development Authority, Chief Development Officer, Meerut for restraining the defendant from constructing the multiplex/ commercial complex and for not sanctioning the building plan, because the land was gifted with the condition that

only a cinema hall would be constructed on it. It was further averred that the defendant was not conferred any ownership right in the gifted land and a relationship of licensor and licensee, existed between Raghukul Narain and the defendant.

5. It is the case of the plaintiffs that the defendant has deliberately violated the terms of the gift deed and as such, the plaintiffs do not want to continue the relationship of licensor- licensee between them. A legal notice was given by the plaintiffs on 11.10.2021 terminating the license of the defendant and directing him to hand over the vacant possession of the disputed land after removing the superstructure and when this was not complied with by the defendant, the plaintiffs have filed the suit for the following reliefs:-

(i) by decree of mandatory injunction granted in favour of the plaintiffs against the defendant, the defendant be directed to hand over the vacant and physical possession of the land gifted to it, after removing the superstructure on it, and if the defendant fails to do so, then it's actual and physical possession be handed to the plaintiffs by court , by adopting due procedure of law.

(ii) by decree of permanent injunction granted in favour of the plaintiffs against the defendant, the defendant be restrained from selling the disputed land, mortgaging it, charging it, creating any lien on it or constructing multiplex/commercial complex on it or altering its condition.

(iii) by decree of the court granted in favour of the plaintiffs against the defendant, the defendant be directed to pay ₹ 5,000/- towards the cost of the legal notice.

(iv) by decree of the court granted in favour of the plaintiffs against the defendant, the plaintiffs be awarded mesne profits at the rate of ₹ 33,300/- per day from the date of filing of the suit till the date of actual possession, regarding which the court fees would be paid at the time of execution.

(v) the costs of the suit be also awarded to the plaintiffs.

Defendant's case

6. The defendant Yaduraj Narain filed his written statement in the trial court in which he accepted that the plaintiffs predecessor Raghukul Narain had conditionally gifted his land for constructing a cinema hall on it. He contended that in terms of the conditions of the gift deed, he had constructed Nandan cinema hall, after obtaining due permission and as such, complied with the conditional gift. He averred that since he had complied with the conditions of the gift, as such, the plaintiffs were not entitled to revoke the gift and take any other action against him. He specifically pleaded that after the execution of the gift deed dated 8.2.1968 and 30.10.1968, he had constructed Nandan cinema hall in the year 1974, after taking due permission and had operated the cinema hall on the gifted land, in accordance with the terms of the gift deed for a period of 53 years, and as such, the plaintiffs had no right to revoke the gift in the year 2021.

7. The defendant further averred that it was not mentioned in both the gift deeds that in future, in any situation whatsoever,

the land would not be used for any other purpose. It was further submitted that keeping in view the prevailing situation, a building plan was submitted to the Meerut Development Authority for reconstruction/ remodelling the Nandan cinema hall, which was duly approved by the Meerut Development Authority, in accordance with the UP government order, which encouraged cinema business. The defendant further averred that previously he was using the land after constructing a cinema hall on it and subsequently also, he will utilise the land for operating a cinema hall on it. It was further averred that in the revenue records, the name of defendant has been mutated and as such, he is the owner of the gifted land, in accordance with the provisions of the Transfer of Property Act, from which he cannot be divested.

8. It was further averred that if, it is presumed that the gift deeds are null and *void ab-initio* then, since the defendant is in, hostile, open, continuous possession of the gifted land for 53 years, as such, he has perfected title of the gifted land on the basis of adverse possession and on this ground, the plaintiffs suit for the relief of possession is barred by limitation. It was further submitted that since the defendant is the owner of the gifted land as such, the plaintiffs are not entitled to get any mesne profit. The plaintiffs suit is barred by Section 38 and 41 of the Specific Relief Act. The defendant is the true owner of the disputed land as such, against the true owner, the plaintiffs are not entitled to get the relief of permanent injunction.

9. It was further averred that the defendant is constructing a multiplex on the gifted land, with all the modern facilities, whose budgeted cost of construction is about ₹ 20 crores and till date, the defendant has spent about ₹ 2 crores and on the spot, construction material of about ₹70 lakhs is lying and if the defendant is restrained from construction, then he will suffer monetary loss as well as physical damage, because basement has been dug. It was submitted that the plaintiffs suit has only been filed to harass the defendant and as such, it be dismissed with a special costs of ₹ 5 lakhs.

10. The plaintiffs filed replica in the trial court in which, they reiterated the plaint submissions and denied the averments of the defendant. It was reiterated that the gift was conditional, according to which cinema hall had to be constructed on the gifted land and further, the gifted land could have only been used for constructing a cinema hall on it and the ownership rights in the gifted land never devolved on the defendant. The possession of the defendant always remained permissive. It was further averred that after demolishing the cinema hall, the defendant has started constructing a multiplex/ shopping complex, which the defendant has got no right to do, which proves that the defendant has violated the conditions of the gift deed and as such, the plaintiffs have a right to revoke the gift and claim back the possession of the gifted land.

11. The trial court on the basis of the pleadings of the parties, framed the following issues on 6.9.2022, which read as under:-

(i) Whether the plaintiffs, on the basis of the plaint averments, are entitled to get back the vacant possession of the property mentioned in schedule A and B, at the end of the plaint?

(ii) Whether the plaintiffs, on the basis of plaint averments, are entitled to get the relief of permanent injunction regarding the disputed property?

(iii) Whether no cause of action has arisen to the plaintiffs for filing the suit?

(iv) Whether the plaintiffs are entitled to get the costs of notice amounting to ₹ 5,000/- from the defendant?

(v) Whether the plaintiffs are entitled to get mesne profits at the rate of ₹ 33,300/- per day, regarding the disputed property?

(vi) Whether the plaintiffs suit is undervalued?

(vii) Whether the court fees paid is insufficient?

(viii) Whether the plaintiffs suit is barred by limitation?

(ix) Whether the plaintiffs suit is barred by Section 38 and 41 of the Specific Relief Act?

(x) Whether the plaintiffs are entitled to get any other relief?

12. During trial, on behalf of the plaintiffs Amit Narain Singh Tyagi was examined as PW-1 and on behalf of the defendant, Devesh Narain was examined as DW-1.

13. The trial court vide judgment and decree dated 16.3.2024 has dismissed the plaintiffs suit. The trial court decided issue number 1,2,4,5,6,10 in favour of the defendant and issue No.3,7,8,9 was decided in favour of the plaintiff.

14. Learned counsel for the plaintiff - appellants submitted that the donor gifted the land only for the purpose of constructing cinema hall on it, and the defendant after accepting the conditional gift, was bound to obey the conditions of the gift. Learned counsel submitted that the defendant after having accepted the conditional gift and constructing a cinema hall on it, was not entitled to demolish the cinema hall and in its place, construct a multiplex/shopping complex, which amounts to violation of the terms of the gift deed as such, the plaintiffs are entitled to revoke the gift and claim back the possession of the gifted land. Learned counsel further submitted that the donee was never permitted to change the usage of the land, which was supposed to be used for constructing only cinema hall, but by constructing a multiplex/shopping complex the donee -defendant has changed the usage of the land, which was not permitted in terms of the gift deed. The defendant has admitted that he is constructing a multiplex/shopping complex on the disputed land after obtaining permission and after getting sanctioned the building plan from the Meerut Development Authority, as such, the defendant cannot be permitted to change the usage of the gifted land. Learned counsel further submitted that the trial court has erred in overlooking the above facts and has recorded a perverse finding that the defendant has duly complied with the terms and conditions of the gift, after having operated for more than 53 years, cinema hall on the disputed land, as such, the plaintiffs are not entitled for the reliefs sought in the plaint. Learned counsel further submitted that since no duration for operating the cinema hall was mentioned in the gift deed as such, a cinema hall once constructed on the gifted land, was supposed to remain in existence forever and by demolishing the cinema hall in the year 2021, the defendant has violated the terms and conditions of the gift, as such

the plaintiff -appellants are entitled to get their suit decreed.

15. Per contra, learned counsel for the defendant- respondent submitted that the donee-defendant had accepted the conditional gift in the year 1968 and had accordingly, after obtaining due permission from the concerned authorities, constructed Nandan cinema hall in the year 1974 on the gifted land, and thereafter, operated the cinema hall for 47 years, till the year 2021. Learned counsel further submitted that after having constructed and operated the cinema hall on the gifted land for 53 years, the donee has fully complied with the terms of the gift deed. Learned counsel further submitted that since no duration was mentioned in the gift deed for which the cinema hall , after construction ,was to remain functional or to remain in existence, as such, it cannot be interpreted in the manner, that forever cinema hall had to be operated on the gifted land. Learned counsel further submitted that the defendant has keeping in view the changing times and taste of the people, to remain profitable in the cinema business, has only demolished the old Nandan cinema hall which was having only one screen, and by constructing a multiplex in its place, which is also a modern cinema hall having three screens. Also, as per the prevailing trend in the multiplexes there are several shops which sell coffee, sweets, popcorn, etc. catering to the demand of the viewers, which cannot be deemed as changing the usage of the gifted land. Learned counsel further submitted that the dominant purpose of the multiplex is to screen movies to the viewers as such, it cannot be said that by demolishing a single screen cinema hall and by constructing in its place a multiplex having three screens, a change of usage has been effected by the donee. With these submissions, it was prayed that the appeal has got no merits and it be dismissed.

16. Learned counsel for the defendant-respondent in support of his submissions has placed reliance upon the following judgments:-

(i) N.P. Saseendran vs. N.P. Ponnamma and Others 2025 SCC OnLine SC 626

(ii) Sridhar and Another vs. N. Revanna and Others (2020) 11 SCC 221

(iii) Narmadaben Maganlal Thakker vs. Pranjivandas Maganlal Thakkerand Others (1997) 2 SCC 255

(iv) Renikuntla Rajamma(Dead) By Legal Representatives vs. K. Sarwanamma (2014) 9 SCC 445

(v) Rajvir Singh vs. Randhir Singh 2024 SCC OnLine ALL 6235

(vi) Asokan vs Lakshmikutty and Others (2007) 13 SCC 210

17. I've heard the learned counsel of both the sides and perused the trial court record and the case law submitted by the learned counsel.

18. The judgments cited by the learned counsel for the defendant-respondent pertain to cases where either the character or nature of the gift deed was in dispute, or where the donor had created a life interest in the subject matter of the gift. However, such issues do not arise in the present case, as neither the character nor the nature of the gift deed is under challenge, nor has the donor created any life interest in the subject matter through the said gift deeds.

Therefore, the cited judgments are distinguishable and have no application to the facts and circumstances of the present case.

19. On the basis of the arguments of the learned counsel of the parties, the following issues arise for determination, in this appeal:-

(1) Whether the gift deeds were conditional? If yes, then what were the conditions of the gift?

(2) Whether the defendant has complied with the conditions of the gift?

(3) Whether the gift is revocable in the year 2021,after the donee having completed the construction of Nandan cinema hall in the year 1974, and keeping it functional for 47 years?

20. The controversy in this appeal hinges on the interpretation of the gift deeds executed by the predecessor of the plaintiffs Raghukul Narain(donor) wayback in the year 1968, in favour of the defendant(donee). For appreciating the controversy in issue, it will be appropriate to reproduce the relevant recitals of the gift deeds, which read as under(translated in English, from Hindi):-

First Gift Deed Dated 8.02.1968/24.02.1968

"I Raghukul Narain son of Raghunandan Richpal caste Tyagi resident of Mohalla Dhalampara Meerut, is the owner of land having area of 1104 square yards, which is shown in red colour in the annexed map, situated in khasra No. 4352 Garhmukteshwar Road, near Sohrab Gate, Meerut. My nephew Yaduraj's land is adjoining to my land, who intends to construct a cinema hall on his land, but since his land is insufficient, according to the bye laws, for constructing a cinema hall, as such he requires my land. Hence, I on my sweet will and consent ,gift the above land admeasuring 1104 square yards to Yaduraj Narain on the condition that if ,Yaduraj Narain is granted permission for constructing cinema hall then, he will construct the cinema hall and he will be entitled to use the gifted land for operating cinema hall on it but if, due to any reason, permission is not granted or if cinema hall is not constructed then, the gifted land will revert back to me or my successors, whoever is alive at that time and further, Yaduraj Narain will have no right to use the gifted land for any other purpose and the gift has been accepted with the above condition, by Yaduraj Narain. Both the parties and their successor will be bound by the above conditions."

Second Gift Deed Dated 30.10.1968/8.11.1968

"I Raghukul Narain son of Raghunandan Richpal caste Tyagi resident of Mohalla Dhalampara Meerut, is the owner of two pieces of land having area of 466.66 and 35(for passage) square yards, which are shown in red colour in the annexed map, situated in khasra No. 4352 Garhmukteshwar Road, near Sohrab Gate, Meerut. My nephew Yaduraj's land is adjoining to my above land, who intends to construct a cinema hall on his land, but since my land is also required, according to the cinema bye laws, hence I gift the above two pieces of land ,having market value of ₹ 10,000 on my sweet will and volition ,to Yaduraj Narain on the condition that if, Yaduraj Narain is granted permission for constructing cinema hall and if, he

construct's a cinema hall then, he will be entitled to use both the gifted land as owner, but if, due to any reason, permission is not granted for constructing the cinema hall or if,cinema hall is not constructed then, I will be entitled to take back the possession of the larger piece of the gifted land having area of 466.66 square yards and further, Yaduraj Narain shall have no right to use the larger piece of land for any other purpose, but the smaller piece of land can be used as passage by me and Yaduraj Narain and this cannot be taken back.The gift has been accepted with the above condition by Yaduraj Narain. Both the parties and their successors will be bound by the above conditions."

21. It is pertinent to mention here that there is no dispute regarding the execution of the gift deeds by the donor and its, acceptance by the donee. There is also no dispute that the gift deeds were got fradulently executed from the donor. The only dispute is regarding the interpretation of the conditions of the gift deeds.

22. From the recitals of the gift deeds mentioned hereinabove, the following facts are apparent:-

(i) the land of donor and donee were situated adjacent to each other.

(ii) the donee wanted to construct a cinema hall on his land ,but it was insufficient according to the bye-laws applicable for constructing a cinema hall, as such, the donor gifted his adjoining land, to enable the donee to get the cinema hall constructed on the gifted land.

(iii) the donor exclusively gifted his land for constructing cinema hall on it and the donee was not permitted to use the gifted land for any other purpose/usage.

(iv) the donor gifted his land with the condition that the donee will obtain necessary permission from the authorities for constructing the cinema hall on the gifted land and if, the permission is granted, then, the donee will construct the cinema hall on the gifted land.

(v) the donor also stipulated in the gift deed that if, for any reason whatsoever, the donee is not able to obtain permission for constructing the cinema hall on the gifted land, or if the cinema hall was not constructed on the gifted land, then, the donee will not be able to use the gifted land for any other purpose/usage and in that situation, he will be entitled to take back the possession of the gifted land.

23.The Apex Court in the case of ***Annaya Kocha Shetty (Dead) through Lrs vs. Laxmibai Narayan Satose Since deceased through Lrs. and Others 2025 SCC OnLine SC 758*** , while elucidating how to interpret the terms of a contract, held as under:-

"16. The circumstances dealing with the dispute between the parties are stated in required detail in the preceding paragraphs. At the outset, let us refer to the ratio of this Court in Provash Chandra Dalui (supra) on the construction of the basic agreement between the plaintiff and the defendant. This Court held that the court must look at the words used in the contract unless they are such that one may suspect that they do not covey the intention correctly. If the words are clear, there is very little the court can do about it. In constructing a deed, looking at the surrounding circumstances and subject matter is legitimate only if the words used are doubtful.

17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.

18. The construction of a deed is "generally speaking, a matter of law." However, when there is an ambiguity in the deed, determining its meaning is a mixed question of fact and law.7 This concept is encapsulated by sections 91 and 92 of the Evidence Act, 1872.

18.1 Section 91 of the Evidence Act, 1872 denotes that a deed constitutes the primary evidence of the terms to which the parties are to adhere. Whereas section 92 of the Evidence Act, 1872 forbids any contradictions or variations in a written document by extrinsic evidence.8 However, there are exceptions outlined in the proviso to section 92, that allow variations from this general rule:

"92. Exclusion of evidence of oral agreement. - "When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms;

Proviso (1) : Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party want or failure of consideration, or mistake in fact or law:

Proviso (2) : The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3) : The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) : The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) : Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved; Provided that the annexing

of such incident would not be repugnant to, or inconsistent with the express terms of the contract:

Proviso (6) : Any fact may be proved which shows in what manner the language of a document is related to existing facts."

18.2 The subtle distinction in the point of law, as carved out by the provisos, is that the evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is no agreement in the first place is admissible.9 Thus, unless the grounds fall within the provisos read with the illustrations to section 92, there is a bar on adducing oral evidence."

24. Section 126 of the Transfer of Property Act deals when gift may be suspended or revoked. The section reads as under:-

"126. When gift may be suspended or revoked *.— The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.*

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

25. The Apex Court in the case of ***R Thajudeen vs. Tamil Nadu Khadi and Village Industries Board (2024) SCC OnLine SC 3037,*** held as under:-

"14. Section 126 of the Act is drafted in a peculiar way in the sense that it contains the exceptions to the substantive law first and then the substantive law. The substantive law as is carved out from the simple reading of the aforesaid provision is that a gift cannot be revoked except in the cases mentioned earlier. The said exceptions are three in number; ***the first part provides that the donor and donee may agree for the suspension or revocation of the gift deed on the happening of any specified event which does not depend on the will of the donor****. Secondly, a gift which is revocable wholly or in part with the agreement of the parties, at the mere will of the donor is void wholly or in part as the case may be. Thirdly, a gift may be revoked if it were in the nature of a contract which could be rescinded.*

15. In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. ***The first is where the donor and the donee agree for its revocation on the happening of any specified event.*** *In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the*

donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded. Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is void ab initio and is of no consequence which has to be ignored.

16. ***The non-utilisation of the suit property for manufacturing Khadi Lungi and Khadi Yarns etc., the purpose set out in the gift deed, and keeping the same as vacant may be a disobedience of the object of the gift but that by itself would not attract the power to revoke the gift deed. There is no stipulation in the gift deed that if the suit property is not so utilised, the gift would stand revoked or would be revoked at the discretion of the donor.****"*

(emphasis supplied)

26. The Apex Court in the case of ***J Radha Krishna vs. Pagadala Bharathi and Another 2025 SCC OnLine SC 1447***, held as under:-

"3. It is not in dispute that Shri KVG Murthy, had executed a document dated 10.01.1986 (Ex.B.1) - Gift Deed though claimed as settlement deed by the appellant - in favour of the respondent, the alleged foster daughter namely Pagadala Bharathi. The said document was subsequently cancelled by way of deed of cancellation dated 30.12.1986, whereafter on 30.09.1992, Shri KVG Murthy executed a Will in favour of his brother's son. The High Court while appreciating the evidence and statutory mechanism in place, more specifically Section 126 of the Transfer of Property Act, 1882, in para 19 has returned the findings as under: —

"19. As stated above, under Section 126 of the Act, if a gift is to be revoked or suspended there should be a right reserved. In fact, the evidence of PW.1, who is the plaintiff in the suit, only shows that a donor has executed the gift deed in favour of defendant no. 1 with the hope that she will look after him till his death. As defendant No. 1 was not looking after him, the settlement deed was cancelled. Therefore, it is a clear admission of a valid execution of the gift deed Ex.B.1 and no other proof is required. So far as the right of the deceased to cancel the gift deed for failure to maintain or look after the donor is concerned, the evidence of PW.1 does not show that at the time of execution of Ex.B.1, there was such an understanding between the donor and the first defendant. ***In the absence of such agreement, Section 126 of the Act cannot be relied upon when there is no right reserved or understanding entered into between the donor and donee****. Therefore, the decision first referred supra cannot be pressed into for the benefit of the respondent herein. In fact, the law of this aspect is very clear and the courts have repeatedly held a settlement deed once executed cannot be cancelled. In this connection it is useful to refer to a decision*

reported in Namburi Basava Subrahmanyam v. Alapati Hymavathi (1996) 9 SCC 388, wherein their lordships after considering the interpretation of the document as a Will or a settlement deed found that the document was a settlement deed creating vested reminder and the said settlement deed subsequently cannot be cancelled by bequeathing the same property in favour of other. In a decision reported in M. Venkatasubbaiah v. M. Subbamma 1955 SCC OnLine AP 202, it was held that-

"A gift subject to the condition that the donee should maintain the donor cannot be revoked under Section 126 of the failure of the donee to maintain the donor firstly for the reason that here is no agreement between the parties that the gift should be either suspended or revoked; and secondly this should not depend on the Will of the donor. Again, the failure of the donee to maintain the donor as undertaken by him in the document is not a contingency which could defeat the gift. All that could be said is that the default of the donee in that behalf amounts to want of consideration. Section 126 itself provides against the revocation of a document of gift for the failure of consideration. If the donee does not maintain the donor as agreed to by him the latter could take proper steps to recover maintenance etc. It is not open to a settler to revoke a settlement at his will and pleasure and he has to get it set aside in a court of law by putting forward such pleas as bear on the invalidity of gift deed".

(emphasis supplied)

27. It is clear from section 126 of the Transfer of Property Act that the donor and donee may agree that on happening of any specified event ,which does not depend on the will of the donor, a gift shall be revoked. It is also apparent that at the mere will of the donor, a gift cannot be revoked. It is also apparent that a gift is like a contract, which can be rescinded like a contract, save for want or failure of consideration.

28. From the law laid down by the Apex Court in the case of ***Annaya Kocha Shetty (supra) , R Thajudeen (supra), J Radha Krishna (supra)*** it is evident, that the intention of the parties is to be ascertained while interpreting the contract. If the words of the contract are unambiguous than there is very little the court can do about it. It is also apparent that the surrounding circumstances and the subject matter, is also to be considered. It is also apparent that if, an absurdity is created by literally reading a contract, then a contract may not be literally interpreted. It is also apparent that a contract must be purposely constructed in the light of its object and context to determine the purpose of the contract.

29. Amit Narain Singh Tyagi PW-1 deposed and proved in his examination-in-chief, the plaint averments. He proved the plaint case. He disclosed in the cross-examination that Raghukul Narain died on 23.2.1986 and the plaintiffs filed the suit on 13.12.2021 and at the time of the filing of the suit, his father Rajeev Tyagi had died. He admitted that both the gift deeds were executed prior to his birth. He admitted that after the year 1968, the defendant had obtained permission for constructing the cinema hall and had also constructed the cinema hall, which had started functioning in the year 1974, as Nandan cinema, which remained functional till the year 2021. He feigned ignorance about the cycle stand, betel shop, eatables shop,etc. being situated

inside the Nandan cinema hall. He also admitted that the donor had neither cancelled the gift deeds in his lifetime nor initiated any cancellation proceedings. After perusing the letter dated 27.4.2019 of Additional District Magistrate(Administration) Meerut sanctioning the building plan, he admitted that the defendant's son Divesh Narain has been granted permission to demolish the closed cinema hall and constructing in its place, a commercial complex, having all the modern amenities, including cinema house of small capacity, under the scheme facilitating such construction. He also admitted, after perusing the khatauni, that the current owner is the defendant Yaduraj Narain Singh. He also admitted that in the proposed multiplex, three small cinema halls will be constructed and the permission for constructing multiplex has not been opposed by the Additional Commissioner, Entertainment tax, Department because such permission, has been granted to facilitate the construction of multiplex having modern amenities, including small cinema halls. He also accepted that the deed which was executed in the year 1968, was a gift deed,and not a lease deed. He also admitted that in both the gift deeds, the word licensee has not been used. He stated that the gift deeds became void, when the cinema hall was demolished. He also admitted that in the gift deeds, it is not mentioned that the defendant will never demolish the cinema hall.

30. The defendant's son Devesh Narain DW-1, being the power-of-attorney holder of the defendant, proved the submissions of the written statement in his examination- in-chief. He deposed that it is nowhere mentioned in the gift deeds that in the future, in any situation whatsoever, the land would not be used for any other purpose. He further deposed that in accordance with the changing demands of the viewers, a building plan for reconstruction /remodelling of the Nandan cinema hall was submitted to the Meerut Development Authority, Meerut which was sanctioned by it. He further deposed that the sanction was accorded, keeping in view the policy of the State government for facilitating the cinema business, after complying with the terms and conditions of the relevant government order. He further deposed that the defendant had previously utilised the land for cinema hall and in future also, the land would be utilised for that purpose. He further deposed that the defendant's name is recorded in the relevant khatauni. He further deposed that after construction of Nandan cinema hall, the defendant has acquired ownership of the gifted land, from which he cannot be divested. He further deposed that if the gift deeds are null and *void ab-initio*, even then, since the defendant is in open, hostile and continuous possession of the land for more than 12 years, as such, the defendant has become owner of the disputed land on the basis of adverse possession. He further deposed that the construction of multiplex would cost around ₹ 20 crores, out of which about 4 crores have already been spent, and if, the construction of multiplex is stopped, then the defendant shall suffer huge loss.

31. DW-1 deposed in cross-examination that after the construction of Nandan cinema hall in the year 1974, the defendant had become owner of the land. He admitted that there was a condition in the gift deed that the defendant had to construct cinema hall on the gifted land, after obtaining permission and it was stipulated that, if the cinema hall is constructed, then the defendant will acquire

the ownership of the gifted land. He admitted that the defendant had accepted the conditions mentioned in the gift deed. He admitted that the multiplex will consist of three small cinema halls and it will also have commercial amenities and the multiplex will be five storeyed building.

32. It is evident from the gift deed that the donor had gifted the land to enable the donee to construct a cinema hall on the gifted land after obtaining permission, under the bye-laws regulating the construction of cinema halls, and if such permission was not granted to the donee, then it was expressly agreed that the gifted land would not be used for any other purpose and further if, the donee failed to construct the cinema hall, then the donor would be entitled to take back the gifted land. It is also not disputed that in the year 1974 the construction of the Nandan cinema hall was completed on the gifted land, which remained functional till the year 2021, till then no dispute arose between the donor and the donee.

33. It is also apparent that no time limit was mentioned in the gift deeds, in which the donee had to construct the cinema hall on the gifted land, as such, it has to be interpreted that the parties intended the construction to take place within a reasonable time. In the instant case, after the execution of gift deeds in the year 1968, Nandan cinema hall was constructed, which started functioning in the year 1974, which remained functional, until it was demolished for constructing a multiplex/commercial complex in the year 2021. It is evident that the cinema hall remained functional for about 47 years.

34. Now the question that arises is, whether after having constructed and operated the cinema hall for about 47 years, can it be said that the donee has not complied with the terms and conditions of the gift, so as to enable the successors of donor to revoke the gift and claim back the possession of the gifted land?

35. It is also to be examined whether by demolishing the cinema hall and constructing in its place, a multiplex/commercial complex, can amount to change of usage of the gifted land?

36. It is very much apparent from the gift deeds that the sole purpose of the gift was to enable the donee to construct cinema hall on the gifted land, after taking due permission from the concerned authorities, in accordance with the bye-laws prevailing at that time. The donee after accepting the gift,duly obtained the requisite permission from the concerned authorities, under the relevant bye-laws and thereafter, started construction of the cinema hall, which was completed in the year 1974, which came to be known as Nandan cinema hall. The cinema hall remained functional till the year 2021, when it was demolished for constructing a multiplex, keeping in view, the changing times and attitude/taste of viewers, who intended to visit the cinema hall, otherwise the donee would not have survived in this business. It is the specific assertion of the defendant that the multiplex was constructed only because the people preferred to watch movies in the multiplexes and if the donee, had not constructed the multiplex, then he would not have survived in this business. It is also apparent that in modern multiplexes there are shops, which sell eatables, confectionery items, beverages, restaurants, to cater to the culinary requirements of the cinema goers.

37. If the condition mentioned in the gift deed is interpreted in the manner that

after having once constructed a cinema hall on the gifted land, the donee was forever required to maintain that building, even when, it became dilapidated, outdated, then it will amount to an absurd condition. It is very much apparent that the concept of multiplex was not in existence in the year 1968, when the land was gifted to the donee for constructing cinema hall on it, as such, it would never have been contemplated by the parties, that in future, after about 50 years, a time will come, when people will stop visiting old-fashioned cinema halls and instead, they will prefer watching the movie in a multiplex, having modern amenities. In view of this, the gift deed cannot be interpreted in a manner, which prevents the donee from demolishing the cinema hall, even after 47 years of its existence. If the interpretation suggested by the learned counsel of the appellant is accepted ,then it will amount to an absurd interpretation of the gift deed, which is impermissible.

38. It is also apparent that the dominant purpose of the multiplex remains screening of movies, providing entertainment to the people. Only the subsidiary purpose is to provide eatables to the cinema goers, and affording some shopping opportunities to them. Generally, the people who desire to watch a movie, visit the multiplex. The primary purpose of majority of people visiting multiplex, is to watch a movie.

39. Since the donee-defendant has duly complied with the conditions of the gift by constructing a cinema hall on the gifted land and operating it for about 47 years, in my opinion, it cannot be said that the donee has violated the terms of the gift deeds and in view of this, the condition of the gift having been fulfilled, the successors of the donor are not entitled to revoke the gift and take back the possession of the gifted land, from the donee. Once the conditions of the gift have been complied with, the donor is divested of the ownership rights in the gifted land and as such, the donor cannot claim back the ownership and possession of the gifted land. After having fulfilled the conditions of the gift by constructing and operating the cinema hall for about 47 years, having become the owner of the gifted land, the donee-defendant cannot be prevented from demolishing the old cinema hall and constructing in its place, a modern multiplex having some shops providing eatables to the cinema goers and also affording some shopping opportunities to them.

40. In the above facts and circumstances, in my opinion, the trial court has not committed any error in concluding that the donee - defendant has not violated the terms of the gift deeds and as such, the plaintiffs have got no right to revoke the gift after about 53 years and claim back the possession of the gifted land. In view of the above discussion, this appeal has got no merits and is liable to be dismissed.

41. **Accordingly, this appeal is dismissed.** Consequently, the impugned judgment and decree dated 16.3.2024 passed by the trial court in OS No. 1510 of 2021 is affirmed.

42. However, in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree, accordingly.

43. Original trial court record, if received, be sent back forthwith.

44. Interim order, if any, stands vacated.

(2025) 9 ILRA 276
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 641 of 2025

Iqbal Ahmad ...Appellant
Versus
Mohiyuddin ...Respondent

Counsel for the Appellant:
V.K. Agnihotri

Counsel for the Respondent:
Mohd. Arif

Issue for Consideration

Issue pertains to whether the trial court, after finding the plaintiff's suit to be barred by Section 331 of U.P.Z.A. & L.R. Act for want of jurisdiction, was justified in adjudicating the matter on merits, or whether it was legally bound to return plaint under O. VII R. 10 CPC for presentation before the court of competent jurisdiction.

Headnotes

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - s. 331 - Code of Civil Procedure, 1908 - O. 7 R. 10 - Plaintiff - appellant instituted Original Suit No. 801 of 2007 before Court of Additional Civil Judge (Senior Division), Nagina, Bijnor, seeking a decree of permanent injunction and declaration in respect of property situated in Mauja Rashidpur Satidas, within the limits of Nagar Palika Parishad, Nagina, claiming ownership over 99% of said property on the basis of alleged oral gift (hiba) made first in favour of his father by other co-sharers, and thereafter by his father in favour of plaintiff himself - It was alleged that defendant's predecessor in collusion with revenue officials, had fraudulently procured mutation of his name in Khatauni, thereby depriving the plaintiff and his predecessors of their rightful entries - Defendant contested the claim, asserting his recorded title and continuous possession for over fifty years - Trial court, upon appraisal of evidence, held that plaintiff failed to establish the alleged oral gifts and revenue entries enjoyed a presumption of correctness, further concluding that civil court lacked jurisdiction u/s. 331 of Act, 1950 - Consequently, suit was dismissed, leading to instant first appeal before High Court.

Held: Plaintiff has sought the relief of permanent injunction, but his name is not recorded as tenure holder in revenue records - He has claimed that defendant and his predecessors have illegally got recorded their name in revenue records, whereas, his and his predecessors name, should have been recorded in revenue record - It is apparent that plaintiff has to seek declaration of his title in disputed land, from the revenue court and without getting any declaration, relief of injunction cannot be granted to plaintiff - Further without correction of revenue entries, plaintiff cannot be granted any relief and jurisdiction of correction of revenue entries lies with revenue court, as such, trial court has not committed any illegality in holding that plaintiff's suit is barred by Section 331 of U.P.Z.A. & L.R. Act, 1950, but trial court has committed legal error in examining the case on merits - Trial court should not have examined the case on merits and simply should have decided the case on jurisdictional issue - Since the trial court had no jurisdiction to decide suit, thus, it was also not vested with legal jurisdiction to examine the merits of case - Trial court has legally erred in deciding the suit - It is apparent from the law laid down by Apex Court in EXL Careers & Another(infra) that where the court has no jurisdiction, then plaint has to be returned in view of provisions of O. 7 R. 10 CPC to enable the plaintiff to present it before court having competent jurisdiction - It is also apparent that court of appeal or revision may also direct, after setting aside the decree passed in suit, return of plaint for presenting it before court of

competent jurisdiction - Thus, trial court has committed legal error in dismissing suit for want of jurisdiction and not returning the plaint to plaintiff, to enable him to present it before court of competent jurisdiction - Accordingly, appeal is allowed and trial court's judgment and decree set aside. [Paras 18, 22, 24] (E-13)

Case Law Cited

EXL Careers & Another v. Frankfinn Aviation Services Private Limited, **(2020) 12 SCC 667 (By 3 Judges) - referred to**

List of Acts

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950; Code of Civil Procedure, 1908

List of Keywords

First appeal u/s 96 C.P.C.; Permanent injunction; Declaration of title; Oral gift (hiba); Possession of gifted property; Owner of 99% of the property; Mutated / mutation; Revenue records; Khatauni; Khewat No. 11; Fraudulent and illegal; Collusion and connivance with revenue officials; Recorded tenure holder; Revenue court; Correction of revenue entries; Jurisdiction; Barred by Section 331 of the U.P.Z.A. & L.R. Act, 1950; Illegality; Court of competent jurisdiction; O. VII R. 10 C.P.C.; Return of plaint; Setting aside the decree.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 641 of 2025
From the Judgment and Decree dated 13.02.2023 passed by the Court of Additional Civil Judge (Senior Division), Nagina Bijnor in Original Suit No.801 of 2007

Appearances for Parties

Advs. for the Appellant:
V.K. Agnihotri

Adv. for the Respondent:
Mohd. Arif

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

1. Heard learned counsel for the plaintiff-appellant and defendant-respondent.

2. Appeal is admitted.

3. The instant first appeal under Section 96 C.P.C. has been filed by the plaintiff-appellant against the judgment and decree dated 13.02.2023 passed by the Court of Additional Civil Judge (Senior Division), Nagina Bijnor in Original Suit No.801 of 2007 (Iqbal Ahmad vs. Mohiyuddin), whereby the plaintiff's suit for the relief of permanent injunction and declaration has been rejected.

4. Factual matrix is that the plaintiff filed O.S. No.801 of 2007 against the defendant in the lower court with the averments that as per khewat no.11, there is an orchard in khasra no.165, current no.165(b) area 1-13-0 in Mauja Rashidpur Satidas falling within the boundaries of Nagar Palika Parishad, Nagina, which is currently known as Mohalla Pahadi Darwaja, Nagina, in which Rahmat-ul-nisha (plaintiff's paternal grand mother), Nazar Ahmad, Umar, Saeed Ahmad (plaintiff's father), Batul, Zafar Ali, Mariyam, Akhtari, Mohd. Mehendi, Mohd. Aslam, Aamna, Kudasia, Umatul Aziza and Ruqayya were the owners in possession alongwith defendants' predecessor Zafaryab Hussain.

5. It is the case of the plaintiff that except Zafaryab Hussain, all other above named persons, had executed an oral gift (hiba) at some point, in favour of his father Saeed Ahmad, which was accepted by him, alongwith the possession of the gifted property.

6. According to the plaintiff, after the acceptance of the above oral gift (hiba), his father became owner of the 99% of the above named property, situated in khewat no.11. It is the case of the plaintiff that his

father had orally gifted (hiba), the above property to him, about 25 years back and he had accepted the gift, alongwith the possession of the gifted property.

7. It is the case of the plaintiff that since some share in the disputed property belonged to the predecessor of the defendant Zafaryab Hussain, who with the connivance of the revenue officers had got mutated his name fraudulently in the revenue records, whereas, the name of his predecessors was deliberately left out, which should have been entered in the revenue records. The plaintiff has further averred that on the basis of the above illegal revenue entry, the predecessor of the defendant, as well as the defendant, had illegally tried to usurp the disputed land. The plaintiff has further averred that the Khatauni submitted by the defendant, paper no. 47C in the trial court, is fraudulent and illegal, because it has been prepared in collusion and connivance with the revenue officials, which needs to be corrected by the Court.

8. When the defendant refused to get corrected the relevant Khatauni entries, then the plaintiff has filed the suit in the lower court with the following reliefs:-

(i) That by decree of permanent injunction granted in favour of the plaintiff against the defendant, the defendant be restrained from interfering in the 99% share of the plaintiff in Khasara no. 165, current no. 165 (b) area 1?3?0 Mauja Rashidpur, Satidas.

(ii) That by decree of the court, it be declared that the Khatauni paper no.C-47, C-48 and C-49 are fraudulent and incorrect, and consequently, the revenue authorities be directed to correct the above revenue entries by recording the ownership of the plaintiff in 99% of the disputed property on the basis of oral gift (hiba) made in his favour by his predecessors.

9. It is apparent that the plaintiff has filed the suit claiming to be the owner of 99% of the disputed property on the basis of oral gift (hiba), executed in his favour, by his predecessors. It is also apparent that the plaintiff is not the recorded tenure holder, but he is seeking permanent injunction, which cannot be granted without seeking any relief of declaration of title, which can only be granted by the revenue court.

10. In the trial court, the defendant resisted the claim of the plaintiff on the ground that he is the recorded tenure holder in khewat No. 11 for the last 50 years, which conclusively proved his title in the disputed property. It was further averred by him that the plaintiff has failed to prove when the disputed property was orally gifted(hiba), in accordance with law, to his predecessors. The defendant also averred that the plaintiff has not been able to prove that the revenue entries are fraudulent.

11. On the basis of pleadings of the parties, the trial court framed the following issues:-

(i) Whether the plaintiff is entitled to get the relief on the basis of plaint averments?

(ii) Whether the plaintiff has got any cause of action against the defendant?

(iii) Whether the suit is under valued?

(iii) Whether the court fees paid is insufficient?

(iv) Whether the plaintiff is entitled to get any relief?

12. In the trial court, the plaintiff Iqbal Ahmad examined himself as PW1, Abdul Wahab as PW-2, the defendant Mohiyuddin examined himself as DW-1. Besides the above oral evidence, documentary evidence of certified copies of khewat, khatauni etc. were also filed.

13. The trial court after examining the case on merits, recorded a specific finding that the plaintiff has failed to prove, when the disputed property was orally gifted (hiba) to his predecessors. The trial court also concluded that the defendant's name is entered in the revenue records for sufficiently long duration, which raised a presumption of correctness of the revenue entries, which has not been rebutted by the plaintiff. The trial court also concluded that plaintiff has failed to adduce any evidence, to prove that the above revenue entries were fraudulent. The trial court also concluded that since the matter relates to correction of revenue entries, which cannot be granted by the civil court, as such, the plaintiff's suit is barred by Section 331 of the U.P.Z.A. & L.R. Act, 1950.

14. In view of the above conclusions arrived at by the trial court, the plaintiff's suit was dismissed vide impugned judgment and decree dated 13.02.2023, aggrieved against which the plaintiff-appellant is in appeal before this Court.

15. Learned counsel for the plaintiff-appellant submitted that since the trial court has concluded that the civil court had no jurisdiction to decide the suit, which is barred under Section 331 of the U.P.Z.A. & L.R. Act, 1950, as such, the trial court should not have examined the matter on merits and should have returned the plaint for presentation to the competent court of jurisdiction, instead of dismissing the suit on merits. Learned counsel further submitted that the appeal be allowed and the plaint be returned to the plaintiff, for presentation to the competent court of jurisdiction.

16. Learned counsel for the defendant-respondent submitted that the judgment of the trial court is perfectly legal, the jurisdiction for correction of revenue entries lies with the revenue court, as such, the plaintiff's suit was not legally maintainable. With these submissions, it was submitted that this appeal has no merits and is liable to be dismissed.

17. I have considered the submissions made by learned counsel for the parties and perused the record.

18. It is apparent that the plaintiff has sought the relief of permanent injunction, but his name is not recorded as a tenure holder in the revenue records. The plaintiff has claimed that the defendant and his predecessors have illegally got recorded their name in the revenue records, whereas, his and his predecessors name, should have been recorded in the relevant revenue record. It is apparent that the plaintiff has to seek declaration of his title in the disputed land, from the revenue court and without getting any declaration, the relief of injunction cannot be granted to the plaintiff. It is also apparent that without correction of relevant revenue entries, the plaintiff cannot be granted any relief and the jurisdiction of correction of revenue entries lies with the revenue court, as such, the trial court has not committed any illegality in holding that the plaintiff's suit is barred by Section 331 of the U.P.Z.A. &

L.R. Act, 1950, but definitely the trial court has committed legal error in examining the case on merits. The trial court should not have examined the case on merits and simply should have decided the case on the jurisdictional issue. Since the trial court had no jurisdiction to decide the suit, as such, it was also not vested with legal jurisdiction to examine the merits of the case. To this extent, the trial court has legally erred in deciding the suit.

19. Now a question arises if the trial court had no jurisdiction to hear and decide the suit, then what was the correct legal option available to it?

20. Order 7 Rule 10 C.P.C., reads as follows:-

"10. <u>Return of plaint</u>- *(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*

<u>Explanation-</u> For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) ***Procedure on returning plaint****- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."*

21. The Apex Court in the case of ***EXL Careers & Another vs. Frankfinn Aviation Services Private Limited, (2020) 12 SCC 667 (By 3 Judges)*** held as under:-

"15.Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648], referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co.[1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India (1973)1SCC115, Hanamanthappa v. Chandrashekharappa (1997) 9 SCC 688, Harshad Chimanlal Modi [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502], arrived at the conclusion as follows: (Modern Construction case , SCC p. 654, para 17)

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same"

"Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] was also noticed in Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF

Universal Ltd., (2006) 1 SCC 364] but distinguished on its own facts."

22. It is apparent from the law laid down by the Apex Court in ***EXL Careers & Another(supra)*** that where the court has no jurisdiction, then plaint has to be returned in view of the provisions of Order 7 Rule 10 CPC to enable the plaintiff to present it before the court having competent jurisdiction. It is also apparent that the court of appeal or revision may also direct, after setting aside the decree passed in a suit, the return of the plaint for presenting it before the court of competent jurisdiction. It is clear that the trial court has committed legal error in dismissing the suit for want of jurisdiction and not returning the plaint to the plaintiff, to enable him to present it before the court of competent jurisdiction.

23. In view of these facts, it will be appropriate that after setting aside the impugned judgment and decree, the plaint is returned to the plaintiff to enable him to present it before the court of competent jurisdiction.

24. **Accordingly, the appeal is allowed** and the impugned judgment and decree of the trial court in O.S No.801 of 2007 dated 13.02.2023, is set aside.

25. The trial court is directed to return the original plaint to the plaintiff, in accordance with law. The parties shall bear their respective costs.

(2025) 9 ILRA 281
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.09.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.

THE HON'BLE AVNISH SAXENA, J.

First Appeal No. 706 of 2025

Arpit Garg **...Appellant**

Versus

Ekta Gupta **...Respondent**

Counsel for the Appellant:
Ashish Gupta

Counsel for the Respondent:

Issue for Consideration

Issue pertains to whether the Family Court erred in law and on facts in refusing to grant leave u/s 14(1) of Hindu Marriage Act, 1955, thereby dismissing joint application of parties seeking permission to present a petition for divorce by mutual consent before the expiry of one year from the date of marriage, on the ground of alleged exceptional hardship or depravity.

Headnotes

Hindu Marriage Act, 1955 - s. 14(1) - Appellant - husband and respondent - wife, whose marriage was solemnized on 3rd March 2025, jointly moved application before Family Court seeking leave to file petition for divorce by mutual consent before completion of one year from the date of marriage, asserting that marriage had irretrievably broken down and that exceptional hardship was being suffered by appellant owing to pendency of criminal proceedings instituted by respondent, which also hindered his plans to travel abroad - Family Court, by judgment dated 13th August 2025, dismissed the said application, holding that statutory requirement of one year's duration could not be waived in absence of proof of exceptional hardship or depravity - Aggrieved, the appellant preferred First Appeal contending that Family Court failed to appreciate the facts and law in their true perspective, particularly in light of coordinate Bench judgment in Angad Soni v. Arpita Yadav (infra), whereas respondent supported appellant's case, both parties having

mutually agreed to dissolution of marriage.

Held: It is evident that parties have agreed to jointly petition for divorce by mutual consent within a short while of marriage, taken place on 3rd March, 2025, neither party has claimed exceptional depravity - Their conduct of being able to agree with each other to jointly petition for divorce by mutual consent militates against any or both of them alleging exceptional hardship - Intention of legislature is clear inasmuch as, marriage must be given a chance - Of all the provisions in Act for separation of parties, they are subject to section 14 - There can be cases of exceptional hardship and depravity, where one spouse is trying to take advantage of marriage happened - Here, both parties have joined and they have said in their joint petition, they are living separately - It was submitted that the parties stand separated from 21st March, 2025 and they stayed together for less than 20 days - In Angad Soni (infra), the coordinate Bench did not render independent determination but relied on precedents of various High Courts - No reason is made out to warrant interference with impugned judgment, which is accordingly affirmed, and appeal is dismissed. [Paras 5 to 7] (E-13)

Case Law Cited

Angad Soni v. Arpita Yadav, **First Appeal Defective No. 115 of 2025, Judgment dated 29.05.2025 - followed**

List of Acts

Hindu Marriage Act, 1955

List of Keywords

Joint application; File and maintain joint petition for divorce by mutual consent; Section 14(1) of Hindu Marriage Act, 1955; Leave ought to have been granted; Exceptional hardship; Exceptional depravity; Criminal complaint; Criminal case is pending; Proceed abroad; Coordinate Bench; Expiry of period of one year since the date of marriage; Jointly petition for divorce by mutual consent; Intention of legislature; Marriage must be given a chance; Provisions in the Act for separation of the parties; Living separately; Impugned judgment confirmed.

Case Arising From

APPELLATE JURISDICTION: (First Appeal No. - 706 of 2025)
From the Judgment and Order dated 13.08.2025.

Appearances for Parties

Advs. for the Appellant:
Ashish Gupta

Adv. for the Respondent:

(Delivered by Hon'ble Arindam Sinha, J.)

1. Mr. Ashish Gupta, learned advocate appears on behalf of appellant-husband. He submits, his client is aggrieved by judgement dated 13th August, 2025 dismissing joint application made by the parties for allowing them to file and maintain joint petition for divorce by mutual consent. Mr. Manoj Kumar Gautam, learned advocate appears on behalf of respondent. He submits, his client supports appellant.

2. Mr. Gupta submits, the joint application was made under section 14(1) in Hindu Marriage Act, 1955. Leave ought to have been granted by the Family Court. It erred on facts as well as in law, to dismiss the application.

3 He submits, exceptional hardship is being suffered by his client. Firstly, because respondent lodged criminal complaint, pursuant to which criminal case is pending. Furthermore, his client wants to proceed abroad and this litigation prevents him.

4. He relies on **judgement dated 29th May, 2025** of coordinate Bench in **First Appeal Defective no. 115 of 2025 (Angad Soni Vs. Arpita Yadav)**. He submits, it was made on similar, if not same facts. Relied upon paragraph 14 is reproduced below.

"14. After going through the factual as well as legal aspect of the matter, ***it is clear that case of the appellant is also covered with the aforesaid judgements passed by various High Courts.*** *The proviso to Section 14 (1) of the Act, 1955 is an exception to the necessity for expiration of a period of one year since the date of marriage to enable a party to file a petition for divorce. Once an application under Section 14 (1) of the Act, 1955 is filed before the court, certainly the court has to see whether there is exceptional hardship to the petitioner or exceptional depravity on the part of the respondent. In the present case, it is borne out of the record that criminal cases have been filed by the respondent and there is no chance that marriage will subsist. Therefore, the proviso to Section 14(1) of the Act, 1955 is to be invoked, so that the parties may get divorce and lead their peaceful life. Both the parties have mutually filed the divorce petition along with an application under Section 14(1) of the Act, 1955, therefore, the said application is ought to be allowed."*

(emphasis supplied)

5. We have no hesitation to say that where the parties have agreed to jointly petition for divorce by mutual consent within a short while of the marriage, taken place on 3rd March, 2025, neither party has claimed exceptional depravity. We go further to say that their conduct of being able to agree with each other to jointly petition for divorce by mutual consent militates against any or both of them alleging exceptional hardship. Intention of the legislature is clear inasmuch as, the marriage must be given a chance. Of all the provisions in the Act for separation of the parties, they are subject to section 14. There can be cases of exceptional hardship and depravity, where one spouse is trying to take advantage of the marriage happened. Here, both parties have joined and they have said in their joint petition, they are living separately. On query Mr. Gupta submits, the parties stand separated from 21st March, 2025. It follows, they stayed together for less than 20 days.

6. We see that in **Angad Soni** (supra) coordinate Bench did not take an independent view but found the case covered by judgements passed by various High Courts. On facts and in the circumstances of present case, we have taken a view.

7. We do not find reason to interfere with impugned judgement. It is confirmed. The appeal is dismissed. We still hope parties, in the time required before they can file for divorce by mutual consent, will get back together.

8. The appeal is disposed of.

(2025) 9 ILRA 283
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 812 of 2022

Smt. Varsha Sharma @ Suman ...Appellant
Versus
Ajay Sharma & Anr. ...Respondents

Counsel for the Appellant:
Durga Prasad Tiwari, Sunil Kumar Shukla

Counsel for the Respondents:
Vidit Narayan Mishra

Issue for Consideration

Issue pertains to whether the trial court, having held that it lacked jurisdiction to entertain the plaintiff's suit seeking a declaration of her matrimonial status as the second legal wife of late Mukesh Sharma, erred in law in dismissing the suit outright instead of returning the plaint under O. 7 R. 10 of Code of Civil Procedure, 1908, for presentation before competent Family Court as mandated u/s 7 of Family Courts Act, 1984.

Headnotes

Family Courts Act, 1984 - s. 7 - Code of Civil Procedure, 1908 - O. 7 R. 10 - Plaintiff - appellant, instituted Original Suit No. 668 of 2015 before Court of Additional Civil Judge (Senior Division), Gautam Budh Nagar, seeking declaration that she be recognized as second legally wedded wife of late Mukesh Sharma, who had earlier been married to one Rekha Sharma and, after her demise, had allegedly solemnized marriage with plaintiff on 12.03.2011 according to Hindu rites and rituals - It was averred that couple lived together until Mukesh Sharma's death on 21.03.2014, leaving behind substantial movable and immovable assets valued at approximately Rs.30 crores, in which she claimed a one-third share along with defendants, his children from first marriage - Defendants, however, denied the marital relationship, asserting that plaintiff was merely a maid employed in household and had fabricated documents to usurp the estate - Trial court, upon considering pleadings and evidence, dismissed the suit on 17.09.2022 holding that relief sought for declaration of matrimonial status fell within exclusive jurisdiction of Family Court u/s 7 of Family Courts Act, 1984 - Aggrieved thereby, plaintiff preferred instant First Appeal challenging the legality of dismissal on the ground that trial court, having found want of jurisdiction, ought to have returned the plaint under O. 7 R. 10 CPC for presentation before competent Family Court.

Held: It is apparent from the law laid down by the Apex Court in Balram Yadav (infra) that relief of declaration of validity of marriage or matrimonial status of any person can only be granted by Family court, as such, trial court lacked jurisdiction to decide the suit and in view of this, trial court has not committed any illegality in coming to conclusion that it lacked jurisdiction to decide the plaintiff's suit - The law declared by Apex Court in EXL Careers & Another (infra) makes it clear that where a court lacks jurisdiction, the plaint must be returned under O. 7 R. 10 CPC for presentation before competent court - In the instant case, despite holding that it lacked jurisdiction, trial court erroneously dismissed the suit instead of returning the plaint - An appellate or revisional court, upon setting aside the decree, may also direct that the plaint be returned for presentation before court of competent jurisdiction - Thus, appeal is partly allowed, trial court's judgment and decree dated 17.09.2022, to the extent it rejects the entire suit, is set aside - However, the finding that suit is not maintainable for want of jurisdiction is upheld. [Paras 18 to 21] (E-13)

Case Law Cited

Balram Yadav v. Fulmaniya Yadav, **(2016) 13 SCC 308;** EXL Careers & Another v. Frankfinn Aviation Services Private Limited, **(2020) 12 SCC 667 (By 3 Judges) - referred to**

List of Acts

Family Courts Act, 1984; Code of Civil Procedure, 1908

List of Keywords

First Appeal u/s 96 C.P.C.; Second legal wife; Matrimonial status; Maintainability of suit; Family Court; Constituted under Family Courts Act, 1984; Suit for declaration of matrimonial status; Movable and immovable property; Joint Bank Accounts; Lack of jurisdiction; Competent court of jurisdiction; O. VII R. 10 C.P.C.; Return of plaint; Presentation before competent court; No illegality committed by trial court; Set aside impugned judgment and decree; Partly allowed; Finding upheld.

Case Arising From

APPELLATE JURISDICTION: First AppeaL No. - 812 of 2022

From the Judgment and Decree dated 17.09.2022 passed by the Court of Additional

Civil Judge (S.D.) Gautam Budh Nagar in O.S. No.668 of 2015.

Appearances for Parties

Advs. for the Appellant:
Durga Prasad Tiwari, Sunil Kumar Shukla

Adv. for the Respondent:
Vidit Narayan Mishra

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

1. The instant appeal under Section 96 C.P.C. has been filed by the plaintiff-appellant Smt. Varsha Sharma @ Suman against the judgment and decree dated 17.09.2022 passed by the court of Additional Civil Judge (S.D.) Gautam Budh Nagar in O.S. No.668 of 2015, Smt. Varsha Sharma @ Suman Vs. Ajay Sharma & others, whereby the plaintiff's suit for declaration that she is the second legal wife of late Mukesh Sharma, has been dismissed by the trial court on the ground that the suit is not maintainable because the plaintiff is seeking declaration of her matrimonial status, which can only be granted by a Family court, constituted under the Family Courts Act, 1984.

2. Brief factual matrix is that the plaintiff-appellant filed a suit with the averments that her husband Mukesh Sharma was earlier married to a woman named Rekha, and from that wedlock, the defendants were born. Thereafter, Smt. Rekha died, after which the plaintiff-appellant and Mukesh Sharma willingly solemnized marriage, according to Hindu rites and rituals on 12.03.2011 and thereafter, lived together. No child was born from this wedlock. Unfortunately, her husband Mukesh Sharma expired on 21.03.2014, leaving behind movable and immovable property of approximately Rs.30 crores in which, she and the defendants had equal 1/3rd share. It is the case of the plaintiff that in order to usurp the property of her late husband, the defendants has refused to accept her as the legal wife of Mukesh Sharma. The plaintiff further averred that during her lifetime, Mukesh Sharma had acknowledged her to be his legal wife and had accordingly, opened joint bank accounts in different banks, in which defendant No.1 Ajay Sharma was also made nominee.

3. It was further submitted that in Aadhaar card and other documents, she was shown to be the legally wedded wife of Mukesh Sharma. The plaintiff submitted that since, the heirs of late Mukesh Sharma have refused to accept her as the legally wedded wife of the deceased, as such, there is no other alternative, but to seek declaration from this Court regarding her matrimonial status. With these submissions, it was prayed that:-

(i) By a decree of declaration granted in favour of the plaintiff, against the defendants, she be declared the second legal wife of late Mukesh Sharma;

(ii) The cost of the suit be also awarded to the plaintiff against the defendants;

(iii) Any other relief, which the Court, deems fit and appropriate may also be granted to the plaintiff, against the defendants.

4. The defendant No.1 Ajay Sharma filed his written statement in the trial court, in which he denied the plaint allegations and submitted that the plaintiff is a fraudulent woman, who worked as a maid in his house situated in Baraula, for which she was paid salary. The plaintiff has not

filed any documents to prove that she is the legally wedded wife of late Mukesh Sharma. The plaintiff wants to usurp the movable and immovable property of the deceased, who is not the legally wedded wife of his father. It was further averred that he has lodged several criminal cases against the plaintiff. The plaintiff has forged and fabricated several documents. The plaintiff never remained the legally wedded wife of his father. With these submissions, it was prayed that the suit be dismissed with special cost.

5. On the basis of the pleadings of the parties, the trial court framed the following issues:-

(i) Whether the plaintiff is the legal wife of late Mukesh Sharma, after the death of his first wife Rekha Sharma?

(ii) Whether the suit is not maintainable?

(iii) Whether the suit is undervalued?

(iv) Whether the court fees paid is insufficient?

(v) Whether the plaintiff is entitled to get any other relief?

6. In the trial court, the plaintiff examined Varsha Sharma as PW-1 and Pramod Kumar as PW-2 and the defendant No.1 Ajay Sharma was examined as DW-1 and Om Prakash as DW-2. Besides the above oral evidence, documentary evidence in the form of photo copies of PAN card, Family register, passport of late Mukesh Sharma, certificate issued by Gram Pradhan, bank account statements, photo copy of voter list, photo copy of FIR in criminal cases, photo copy of insurance policies, etc. were submitted before the trial court.

7. During trial, defendant No.2 Ankita Sharma died on 01.10.2015.

8. The trial court while disposing the issue no.1 & 2 concluded that since the plaintiff has asserted that she is the legal wife of late Mukesh Sharma, as such, a declaration is required regarding her matrimonial status, which can only be granted by the Family court. The trial court came to the conclusion that only the Family court is competent to grant the desired relief to the plaintiff.

9. In view of this, issue no.2 regarding the maintainability of the suit was decided against the plaintiff, in favour of the defendants. The trial court came to the conclusion that the plaintiff cannot be granted any relief by this court and as such, the plaintiff's suit was dismissed, aggrieved against which, the plaintiff-appellant has filed the instant appeal.

10. Learned counsel for the appellant submitted that the trial court has legally erred by dismissing the suit on the issue of lack of jurisdiction. Learned counsel for the appellant further submitted that if, the trial court was of the opinion that the suit is not legally maintainable, then simply, the plaint should have been returned to the plaintiff, for presentation to the competent court of jurisdiction under Order 7 Rule 10 CPC. He further submitted that the trial court could not have examined the merits of the case. With these submissions, it was prayed that the impugned judgment and decree of the trial court be set aside, and the trial court be ordered to return the plaint to the

plaintiff, for presentation to the competent court of jurisdiction.

11. Per contra, learned counsel for the respondent submitted that the trial court has not committed any legal error in dismissing the suit because the declaration of matrimonial status can only be granted by the Family court, constituted under the Family Courts Act, 1984. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed.

12. I have heard learned counsel for the parties and perused the record.

13. It is apparent that the plaintiff is claiming herself to be the second legal wife of late Mukesh Sharma. It is the plaintiff's case that after the death of Mukesh Sharmaâ€™s first wife Rekha Sharma, she had solemnized marriage on 12.03.2011 with Mukesh Sharma according to Hindu rites and rituals and thereafter, they lived together. The plaintiff submitted that the legal heirs of late Mukesh Sharma are not accepting her as the legally wedded wife of late Mukesh Sharma, as such, the plaintiff has sought declaration from the court that she be declared the second legal wife of late Mukesh Sharma.

14. Section 7 of the Family Courts Act, 1984 reads as under:-

*"7.**Jurisdiction**- (1) Subject to the other provisions of this Act, a Family Court shall–*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

***Explanation.–**The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—*

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

15. The Apex Court in the case of ***Balram Yadav vs. Fulmaniya Yadav (2016) 13 SCC 308,*** while discussing the jurisdiction of the Family courts, held as under:-

"7. Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws."

16. Order 7 Rule 10 C.P.C., reads as follows:-

"10. <u>Return of plaint</u>- *(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*

Explanation- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."

17. The Apex Court in the case of ***EXL Careers & Another vs. Frankfinn Aviation Services Private Limited, (2020) 12 SCC 667 (By 3 Judges)*** held as under:-

"15.Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648], referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co.[1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India (1973)1SCC115, Hanamanthappa v. Chandrashekharappa (1997) 9 SCC 688, Harshad Chimanlal Modi [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502], arrived at the conclusion as follows: (Modern Construction case , SCC p. 654, para 17).

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court

having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same"

"Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] was also noticed in Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] but distinguished on its own facts."

18. It is apparent from the law laid down by the Apex Court in ***Balram Yadav(supra)*** that the relief of declaration of validity of marriage or the matrimonial status of any person can only be granted by the Family court, as such, the trial court lacked jurisdiction to decide the suit and in view of this, the trial court has not committed any illegality in coming to the conclusion that it lacked jurisdiction to decide the plaintiff's suit.

19. It is also apparent from the law laid down by the Apex Court in ***EXL Careers & Another(supra)*** that where the court lacked jurisdiction, then plaint has to be returned in view of the provisions of Order 7 Rule 10 CPC, to enable the plaintiff to present it before the court having competent jurisdiction. In the instant case, after concluding that it lacked jurisdiction, the trial court has erred in dismissing the suit and, in not returning the plaint to the plaintiff, for presentation to the competent court of jurisdiction, and this illegality committed by the trial court, needs to be rectified in this appeal.

20. It is also apparent that the court of appeal or revision may also direct, after setting aside the decree passed in a suit, the return of the plaint for presenting it before the court of competent jurisdiction.

21. Accordingly, the appeal is **partly allowed**. The impugned judgment and decree of the trial court dated 17.09.2022, in so far, as the rejection of the whole suit is concerned, is set aside. The finding of the trial court that the suit is not maintainable for lack of jurisdiction, is upheld.

22. The trial court is directed to return the original plaint to the plaintiff in accordance with the provisions of Order 7 Rule 10 CPC, for presentation before the court of competent jurisdiction.

23. However, in the facts and circumstances of the case, there shall be no order as to costs.

24. Office is directed to prepare the decree accordingly.

25. Office is also directed to send back the original trial court record.

(2025) 9 ILRA 289
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

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

Habeas Corpus Writ Petition No. 308 of 2025

Mayank Ojha (Minor) Thru Here Natural Guardian Mother Shashi ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sanjeev Kumar Shukla

Counsel for the Respondents:
G.A., Om Prakash Yadav, Ram Milan Yadav

Issue for Consideration

Whether Writ of Habeas Corpus is not maintainable against a judicial order, i.e. an order passed by the Child Welfare Committee under the Juvenile Justice Act, 2015?

Head Notes

The Constitution of India, 1950-Article 226, The Juvenile Justice (Care and Protection of Children) Act-2015- Sections 2, 27, 37, 101 & 102- Person aggrieved by an order passed by the Child Welfare Committee can file an appeal under Section 101 of the JJ Act. JJ Act provides the revisional forum before the High Court -It cannot be presumed that in case the corpus is in Children's Home pursuant to an order passed by the 'Child Welfare Committee'; then the same is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of Juvenile Justice Act, 2015, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the 'Child Welfare Committee', the petitioner is at liberty to take recourse of remedy of Appeal or Revision provided under Sections 101 & 102 of the Juvenile Justice Act- Petition dismissed.

Held-The order passed by the Committee pursuant to which the corpus has been sent to Children's Home is a judicial order and hence the detention of corpus cannot be termed to be illegal.(E-15)
(Para 26, 27 & 29)

Case Law Cited

Kanu Sanyal versus District Magistrate, Darjeeling and Others; reported in (1973) 2 SCC 674; Tejaswini Gaude versus Shekhar Jagdish Prasad Tewari reported in (2019) 7 SCC 42; Rachna and another versus State of U.P. and others; reported in AIR 2021 All 109 (FB); Nirmala versus Kulwant Singh and others; reported in (2024) 10 SCC 595

List of Acts

The Juvenile Justice (Care and Protection of Children) Act-2015; The Guardians and Wards Act, 1890

List of Keywords

Habeas Corpus not maintainable against judicial order**;** Orders by Court of competent jurisdiction; Child Welfare Committee; Juvenile Justice Act; Appellate or Revisional forum

Case Arising From

Upon refusal of the petitioner corpus to go with his mother and father being in Jail; he was sent to 'Gandhi Seva Niketan Bal Grih', Rae Bareli under the order / directions of the Child Welfare Committee, District- Amethi, dated 24.02.2024.

Appearances for Parties

Counsel for Petitioner(s) : Sanjeev Kumar Shukla
Counsel for Respondent(s) : G.A., Om Prakash Yadav, Ram Milan Yadav

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

1. Heard Sri. Sanjeev Kumar Shukla, learned counsel for the petitioner, Sri. G.D.Bhatt, learned A.G.A. for the State-respondents as well as Sri. R. M. Yadav, Advocate, who has filed Vakalatnama on behalf of opposite party No. 7, which is taken on record.

2. By means of the present writ petition the petitioner has prayed for the following reliefs:

"I. Issue a writ or order in the nature of Habeas Corpus is direct the opposite party no. 2 & 3 to produce the corpus of the petitioner Mayank Ojha aged about 11 years Son of Surya Prakash Ojha before this Hon'ble Court he may be released from the illegal and unjustified

custody and detention of the opposite party no.2 and 3 and in case if the opposite party no.2 and 3 failed to ensure the production of the corpus of the petitioners to directed the opposite party no-2 to 6 to ensure the production of the petitioner before this Hon'ble Court on date fixed by the Hon'ble Court and after recording her free statement, he may be released from the illegal and unjustified custody and detention of the opposite party no.2 and 3 and give the custody of her mother of the petitioner.

II. That in case if the opposite party no.2 failed to ensure the production of the corpus of the petitioner to directed the opposite party no. 3 to ensure the production of the petitioner before this Hon'ble Court on date fixed by the Hon'ble Court and after recording her free statement, he may be released from the custody of the opposite party no.02 an 3 and give the custody of her mother of the petitioner."

3. This Court on 26.08.2025 passed an Order, operative part whereof is extracted herein below for ready reference:

"7A. Having considered the submissions of the learned counsel for the parties and also to know the willingness of the detenue Mayank Ojha, his presence would be required before this Court on the next date.

8. List this case on 08.09.2025.

9. On that date, the detenue Mayank Ojha shall appear before this Court and his appearance shall be ensured by the Superintendent, Rajkiya Bal Grih (Balak), Mohaan Road, Lucknow and a copy of this order be provided to the Superintendent, Rajkiya Bal Grih (Balak), Mohaan Road, Lucknow, by registered post/speed post within three working days for its compliance.

10. On the next date, the mother of the detenue (petitioner here) namely Shashi and opposite party no. 7- Surya Prakash Ojha (father of the detenue) shall appear in person before this Court.

11. The Station House Officer, Police Station Sangrampur, District Amethi shall ensure the presence of opposite party no. 7 on the next date.

12. Learned A.G.A. shall intimate this order to the Station House Officer, Police Station Sangrampur, District Amethi, for its compliance "

4. In compliance of the aforesaid Order, Ms. Shashi the mother of the child/petitioner corpus namely Mayank Ojha and Mr. Surya Prakash Ojha (respondent No. 7) are present before this Court.

5. The child/corpus namely Mayank Ojha, aged about 11 years, son of Mrs. Shashi and Mr. Surya Prakash Ojha is also present-in-person. His presence before this Court has been ensured by Mr. Ram Krishna Awasthi, In-charge of *'Rajkiya Bal Griha (Balak)',* Mohan Road, Lucknow.

6. Mr. Ram Krishna Awasthi has stated that earlier the child/corpus was placed at *'Rajkiya Bal Griha (Balak)'*, Mohan Road, in his custody, however, at present he is boarding at *'Dayanand Bal Sadan'*, Motinagar, Lucknow. He further submitted that in pursuance of the letter communicating the Court's Order dated 26.08.2025, he being the In-charge of

'Rajkiya Bal Griha (Balak)'; has given company to the child/petitioner corpus. He informed the Court that the petitioner corpus is enjoying his life in congenial and healthy atmosphere at *'Dayanand Bal Sadan'*, Motinagar, Lucknow. He has already been admitted to a school having good reputation and standard, where he is studying properly and participates in extracurricular activities. He is a very sharp / brilliant student and has secured first division.

7. Mr. Vinod Kumar Pandey, Sub-Inspector, Police Station-Sangrampur, Amethi has ensured the presence of the respondent No. 7 as well as the child/ petitioner corpus.

8. The child/petitioner corpus namely Master Mayank Ojha who is present before this Court appears to be a normal child with sharp and healthy mind having commendable ability to understand and answer the queries of the Court properly.

9. On being asked by the Court, as to whether he is willing to live with his mother namely Mrs. Shashi, who by means of the instant petition has come before this Court as natural guardian of the petitioner corpus; the child/corpus namely Mayank Ojha outrightly refused to accept the said proposal by saying that he is not at all willing to go and live with his mother. In reply to a pointed query as to why he is not willing to live with his own mother, he categorically stated that he does not like his mother as she had left him while he was just two years old baby. On being further asked as to whether he wants to go and live with his father Mr. Surya Prakash Ojha, the child reluctantly stated that although he has no objection in living with his father, but he would prefer to stay at *'Dayanand Bal Sadan'*, Motinagar, Lucknow where he is presently residing. He not only uttered satisfaction with his present status of living at *'Dayanand Bal Sadan'* Motinagar, rather expressed happiness over the same.

10. Mr. Surya Prakash Ojha, the father of the child/corpus, on being asked as to whether he remarried after the dissolution of marriage with Ms. Shashi; he stated that though he got remarried, but his second wife died after some time. At present he is living alone at Faridabad on account of his job, where he is presently working as Quality Supervisor at Mehra Metal, Faridabad, Haryana.

11. Replying to the query of the Court that whether the father of the petitioner corpus ever visited the aforesaid Child Home to meet his son; the In-charge *'Rajkiya Bal Griha (Balak)'*, Mr. Ram Krishna Awasthi, quoted an incident that Mr. Surya Prakash Ojha once along with a lady came to *'Dayanand Bal Sadan'*, Motinagar, Lucknow and told that he has come to celebrate the birthday of his son Mayank Ojha. But, on verification it was found that the said lady was not the mother of the petitioner corpus. In such a situation suspecting some foul play the concerned authority did not permit him to meet the petitioner.

12. Confronting the aforesaid allegation, Mr. Surya Prakash Ojha fairly conceded that the said lady was not the mother of the petitioner but his maid, however, he had wrongly introduced her as the mother of the child just to manage a meeting with his son. He has stated that he is willing to live with his son Mayank Ojha and also undertaken that he will take care of him properly.

13. Per contra, Mr. G.D.Bhatt, learned Additional Government Advocate;

appearing on behalf of the State-respondents, on the basis of the instructions / comments dated 20.08.2025 as furnished by Mr. Ram Prakash Yadav, Sub- Inspector, Police Station-Sangrampur, District- Amethi; submits that on account of the fact that the relationship between the mother and father of the petitioner corpus are so strained that they got their marriage dissolved from the Court of law. Moreover, the mother namely Mrs. Sashi lodged an First Information Report against Surya Prakash Ojha (father of the Petitioner corpus) and succeeded in sending him to jail in Case Crime No. 120/23 under section 420, 467 and 468 of I.P.C. Further, due to the explicit refusal of the petitioner corpus to go with his mother namely Ms. Sashi and father Surya Prakash Ojha being in Jail; he was sent to *'Gandhi Seva Niketan Bal Grih'*, Rae Bareli under the order / directions of the Child Welfare Committee, District-Amethi, dated 24.02.2024.

14. The extract of the instruction / comment dated 20.08.2025 as has been placed before this Court by the learned Additional Government Advocate, is quoted hereinbelow for ready reference:

"उपरोक्त बन्दी प्रत्यक्षीकरण याचिका के सम्बन्ध में आख्या इस प्रकार है:-

1- प्रस्तर-*1* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

2- प्रस्तर-*2* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

3-प्रत्तर-*3* में अंकित कथन याचिनी द्वारा मा० न्यायालय से की गयी याचना से संबंधित है, जिसके द्वारा याचिनी ने डेटेन्यू को मा० न्यायालय के समक्ष प्रस्तुत किये जाने एवं डेटेन्यू डेटेन्यू को याचिनी / उसकी माता की सुपुर्दगी में में दिया जायेगा।

इस संबंध में अवगत कराना है कि डेटेन्यू मयंक ओझा के माता-पिता (याचिनी श्रीमती शशि व विपक्षी सं0-*7* सूर्य प्रकाश ओझा) के मध्य काफी दिनी से विवाद चल रहा था और सक्षम न्यायालय के द्वारा विधिक रूप से तलाक हो चुका है मयंक के पिता/विपक्षी सं0-*7* सूर्य प्रकाश ओझा नि०ग्रा० पता उपरोक्त के द्वारा न्यायपीठ बाल कल्याण समिति को प्रेषित पत्र में मयंक की माता श्रीमती शशि ओझा पुत्री शीतला प्रसाद तिवारी ग्रा० होलमन तिवारी का पुरवा ब्लाक भेटुआ थाना जनपद अमेठी का सक्षम न्यायालय द्वारा विधिक रूप से तलाक हो जाने के पश्चात वर्तमान में दूसरी शादी करके दूसरे पति एवं बड़े बेटे ऋषि ओझा के साथ हरियाणा में रहने का उल्लेख किया गया है तथा मयंक के पिता/विपक्षी सं०-*7* सूर्यप्रकाश ओझा को उसकी पूर्व पत्नी शशि ओझा के द्वारा मु०अ०सं०-*120/23* अन्तर्गत धारा *420, 467* व *468* आई.पी.सी. में दर्ज कराकर जेल भेजवाया गया ऐसी स्थिति में मयंक /डेटेन्यू निराश्रित होने के कारण न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक/डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम *2* साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाउंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

चूंकि प्रकरण माता-पिता के मध्य बच्चे की कस्टडी का है, अतः इसका निस्तारण थाना स्थानीय के स्तर से सम्भव नहीं है। प्रकरण में मा० न्यायालय अथवा सक्षम न्यायालय द्वारा जो भी आदेश पारित किया जायेगा, उसका अक्षरशः अनुपालन सुनिश्चित किया जायेगा।

4- प्रस्तर-*4* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

5-प्रस्तर-*5* में अंकित कथन पर कोई टिप्पणी नहीं करनी है।

6-प्रस्तर में अंकित कथन प्र०सू०रि० सं०-*120/2023* अंतर्गत धारा *468, 467, 420* आईपीसी थाना संग्रामपुर जनपद अमेठी से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

7-प्रस्तर-*7* में अंकित कथन के संबंध में यह कहना है है। कि मु०अ०सं०-*120/23* अनार्गत धारा *420, 467* व *468* आई.पी.सी. में अभि० विपक्षी सं०-*7* सूर्य प्रकाश ओझा, जो कि डेटेन्यू का पिता है के जेल चले जाने की स्थिति में में मयंक /डेटेन्यू निराश्रित होने के कारण उसे न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक /डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम *2* साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाउंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

8- प्रस्तर-*8* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

9- प्रस्तर-*9* में अंकित कथन के संबंध में यह कहना है कि मु०अ०सं०-*120/23* अन्तर्गत धारा *420, 467* व *468* आई.पी.सी. में अभि०/ विपक्षी सं०- *7* सूर्य प्रकाश ओझा, जो कि डेटेन्यू का पिता है के जेल चले जाने की स्थिति में मयंक /डेटेन्यू निराश्रित होने के कारण उसे न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक/डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम *2* साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया में तुम्हारे साथ नही जाउंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

10- प्रस्तर *10* से *12* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

11- प्रस्तर-*13* में अंकित कथन न्यायपीठ जिला बाल कल्याण समिति जनपद् अमेठी द्वारा पारित आदेश दिनांकत *12.06.2025* से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

12- प्रस्तर-*14* से *19* में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

13- प्रस्तर-*20* में अंकित कथन मा० न्यायालय से संबंधित हैं। चूंकि प्रकरण माता-पिता के मध्य बच्चे की कस्टडी का है, अतः इसका निस्तारण थाना स्थानीय के स्तर से सम्भव नहीं है। प्रकरण में मा० न्यायालय अथवा सक्षम न्यायालय द्वारा जो भी आदेश पारित किया जायेगा, उसका अक्षरशः अनुपालन सुनिश्चित किया जायेगा।"

15. Learned Additional Government Advocate has also drawn our attention to the order dated 12.06.2025 as contained in Annexure No. 8 to the Writ Petition whereby The District Child Welfare Committee, Amethi after taking into consideration the overall facts and circumstances of the case passed a detailed order keeping in view the welfare of the minor and his wish/desire and directed the Superintendent, *Rajkiya Bal Griha (Balak), Mohan Road, Lucknow* to get him admitted in *Dayanand Bal Sadan Awasiya Vidyalaya, Moti Nagar, Lucknow* for his proper education. For convenience, the aforesaid order is quoted herein below:

"न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष मयंक ओझा पुत्र श्री सूर्यप्रकाश ओझा उम्र लगभग *10* वर्ष नि०ग्रा० गैहदा ठेंगड़ा थाना संग्रामपुर जनपद अमेठी की पत्रावली प्रस्तुत हुई पत्रावली में समस्त सभी अभिलेखों का अवलोकन करने पर ज्ञात हुआ कि मयंक ओझा के माता-पिता के मध्य काफी दिनों से विवाद चल रहा था और सक्षम न्यायालय के द्वारा विधिक रूप से तलाक हो चुका है मयंक के पिता सूर्य प्रकाश ओझा नि०ग्रा० पता उपरोक्त के द्वारा न्यायपीठ बाल कल्याण समिति को प्रेषित पत्र में मयंक की माता शशि ओझा पुत्री शीतला प्रसाद तिवारी ग्रा० होलमन तिवारी का पुरवा ब्लाक भेटुआ थाना व जनपद अमेठी का सक्षम न्यायालय द्वारा विधिक रूप से तलाक हो जाने के पश्चात वर्तमान में दूसरी शादी करके दूसरे पति एवं बड़े बेटे ऋषि ओझा के साथ हरियाणा में रहने का उल्लेख किया गया है तथा मयंक के पिता सूर्यप्रकाश ओझा को उसकी पूर्व पत्नी शशि ओझा के द्वारा मु०अ०सं० *120/23* अन्तर्गत बारा *420,467* व *468* भा०द०सं० में दर्ज कराकर जेल भेजवाया गया ऐसी स्थिति में मयंक निराश्रित होने के कारण न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया बालक मयंक ने अपनी माता शशि के साथ जानें से यह कहते हुए इन्कार कर दिया

कि मुझे तुम *2* साल की उम्र में छोड़कर चली गई थी और में पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाऊँगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड़ लखनऊ में आवासित है। मयंक ओझा से कई बार उसके माता-पिता से वार्ता करायी गई किन्तु मयंक अपने माता-पिता के साथ जाने को तैयार नही है मयंक के पिता ने भी दूसरी शादी कर ली है एवं माता शशि ने भी दूसरी शादी कर ली है सौतेली मां अथवा सौतेले पिता के सानिध्य में बालक मयंक का भविष्य उज्जवल प्रतीत नहीं हो रहा है मयंक की मां शशि ओझा ने जिला प्रोबेशन कार्यालय अमेठी के माध्यम से मयंक ओझा की शिक्षा एवं संरक्षण के सम्बन्ध में पत्र प्रस्तुत किया है. उक्त प्रकरण माननीय पारिवारिक न्यायालय से सम्बन्धित प्रतीत होता है अतः मयंक ओझा के संरक्षण से सम्बन्धित वाद सक्षम न्यायालय में योजित कराकर निस्तारण कराना उचित प्रतीत होता है। पत्रावली में राजकीय बाल गृह बालक मोहान रोड लखनऊ के अधीक्षक का पत्र भी संलग्न है जिसमें बालक मयंक को अच्छी शिक्षा प्रदान कराने हेतु दयानन्द बाल सदन आवासीय विद्यालय मोती नगर लखनऊ में शिक्षा दिलाने की इच्छा व्यक्त की गई है जिसमें बच्चे का उज्जवल भविष्य एवं सर्वोत्तम हित प्रतीत होता है।

आदेश

अतः न्यायपीठ बाल कल्याण समिति जनपद अमेठी सर्वसम्मति से अधीक्षक राजकीय बाल गृह बालक मोहान रोड लखनऊ को निर्देशित करती है कि बालक मयंक ओझा की उचित शिक्षा हेतु दयानन्द बाल सदन आवासीय विद्यालय मोती नगर लखनऊ में प्रवेश दिलाये तथा मयंक के माता शशि एवं पिता सूर्य प्रकाश को निर्देशित किया जाता है कि सक्षम न्यायालय में वाद योजित करके मयंक के संरक्षण हेतु उचित आदेश पारित कराये।"

16. The first and the foremost contention of the Learned Additional Government Advocate is that the Writ of Habeas Corpus is not maintainable against a judicial order, i.e. an order passed by the Child Welfare Committee under the Juvenile Justice Act, 2015. He further submitted that if the detention is pursuant to judicial orders passed by a Court of competent jurisdiction or by the Child Welfare Committee under the Juvenile Justice Act, the same cannot be treated as an illegal detention. The grievance, if any, against such an order may be redressed by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the applicable provisions of law but the same cannot be reviewed in a petition seeking writ of habeas corpus.

17. It has been vehemently argued by Mr. G.D.Bhutt that the aforesaid order dated 12.06.2025 passed by the District Child Welfare Committee, Amethi in exercise of its' power under the Juvenile Justice (Care and Protection of Children) Act has not been challenged before any competent forum having jurisdiction nor the custody of the petitioner corpus has been sought under the Guardians and Wards Act or any other law and as such neither the mother nor the father can be allowed to seek/procure the relief by circumventing the statutory remedies by way of Writ of Habeas Corpus.

18. We have heard the submissions of the parties present before the Court and perused the available material. Before entering into the merits of the case, it would be apt to consider the issue of maintainability of the instant Writ of Habeas Corpus.

19. At this stage it would be appropriate to go through the observations made by the Hon'ble Supreme Court regarding the Writ of Habeas Corpus, in the case of **Kanu Sanyal versus District Magistrate, Darjeeling and Others;** reported in **(1973) 2 SCC 674.** The relevant part of the same is extracted herein below:

"It will be seen from this brief history of the writ of habeas corpus that it

is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". The form of the writ employed is "We command you that you have in the King's Bench Division of our High Court of Justice -- immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody -- together with the day and cause of his being taken and detained -- to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf". The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy Patna High Court CR. WJC No.1355 of 2019 dt. 05-03-2020 for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C., in Cox v. Hakes (supra), "the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom" and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. ..."

20. The question on the maintainability of the habeas corpus petition with regard to custody of the minor child came up for consideration before the Hon'ble Supreme Court in the case of **Tejaswini Gaude versus Shekhar Jagdish Prasad Tewari** reported in (2019) 7 SCC 42, wherein the Hon'ble Apex Court has been pleased to observe as under: (SCC p. 54, paras 19-20)

"19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy, and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise, a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant

differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

21. The Full Bench of this Court in the case of **Rachna and another versus State of U.P. and others;** reported in **AIR 2021 All 109 (FB),** while deciding a reference made by a Division Bench considering various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the law laid down by various Courts; has answered as under:

"We accordingly come on our conclusions in respect of question nos. 1, 2 and 3 for determination as follows: -

Question No. 1: "Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?"

Answer: "If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus."

Question No. 2: "Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?"

Answer: "An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention."

Question No. 3: "Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act ?"

Answer: "Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child

is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h)."

22. The Full Bench of this Court, in the case of Rachna *(supra)* very categorically observed that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the 'Child Welfare Committee'. Suffice to indicate that an illegal or irregular exercise of jurisdiction by the Magistrate passing an order of remand or by the 'Child Welfare Committee' under Juvenile Justice Act cannot be said to be an illegal detention. The grievance, if any, against such an order may be redressed by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the applicable provisions of law but the same cannot be reviewed in a petition seeking writ of habeas corpus.

23. The Hon'ble Full Bench while deciding the case of Rachna *(supra)* also took serious note of the situation where a minor corpus refuses to go with his / her parents, then in such situation, appropriate arrangements must be made to ensure the well being of the child. His / her interest bears paramount importance and before proceeding to pass order for custody of the minor, the welfare of the minor must be kept in mind. The wish of minor and the wish/desire of girl can always be considered by the Magistrate concerned/Committee and as per her wishes/desire further follow up action is required to be taken in accordance with law under the Juvenile Justice Act.

24. The Hon'ble Supreme Court in the case of **Nirmala versus Kulwant Singh and others;** reported in **(2024) 10 SCC 595,** has been pleased to hold that the habeas corpus is a prerogative writ which is an extraordinary remedy and recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. The Hon'ble Apex Court has also observed that no hard-and-fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned. The writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case. It has also been held by the Hon'ble Supreme Court that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor is by a person who is not entitled to his legal custody. It has further been held that in child custody matters, the writ of habeas corpus is maintainable only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

25. It is trite in law that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Section 27 of the Juvenile Justice Act defines the 'Child Welfare Committee' and provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to 'child in need of care and protection' under the said Act. The powers of the Committee are defined

in Section 27(9) of the Juvenile Justice Act. The said provision of the Act makes it clear that while passing such orders, the Committee exercises the power of Judicial Magistrate and functions as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The powers, functions and responsibilities of the Committee are defined under Section 29 and 30 of the Juvenile Justice Act. Section 30(vi) provides that it is the function of the Committee to ensure care, protection, proper rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard. It further provides for selection of registered institution for placement of each children requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution. Further, the term 'Juvenile' has been defined in Section 2(35) of the Juvenile Justice Act to mean a child below the age of 18 years. The word 'Child' has been defined in Section 2(12) of the Juvenile Justice Act to mean a person who has not completed 18 years of. Age. The meaning of the phrase 'child in need of care and protection' is defined under Section 2(14) of the Juvenile Justice Act.

26. The Juvenile Justice Act, 2015 provides a complete mechanism dealing with welfare of the child. The 'Child Welfare Committee' exercises the power of Magistrate in view of the provision of Section 27 of the Juvenile Justice Act, 2015 and for all purposes, the Committee acts like the Magistrate. Once the order has been passed by the Magistrate, then it can only be assailed before the appropriate Court by filing an appeal or any other remedy as provided under the law.

27. At the cost of repetition, we reiterate that if the corpus is found a child, as defined under Section 2(12) of the Juvenile Justice Act, 2015, he/she would fall in the category of 'child in need of care and protection' in view of Clauses (iii), (viii) and (xii) of Sub-section (14) of Section 2 of the Juvenile Justice Act, 2015. Hence the order passed by the Child Welfare Committee placing the corpus in a protection home would be within its power conferred under Section 37 of the Juvenile Justice Act, 2015. Thus, the person aggrieved by an order passed by the Child Welfare Committee can file an appeal under Section 101 of the Juvenile Justice Act, 2015. Further, the Juvenile Justice Act, 2015 provides the revisional forum before the High Court wherein the High Court may, at any time either on its own motion or an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Therefore, in such a situation, it cannot be presumed that in case the corpus is in Children's Home pursuant to an order passed by the 'Child Welfare Committee'; then the same is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of Juvenile Justice Act, 2015, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the 'Child Welfare Committee', the petitioner is at

liberty to take recourse of remedy of Appeal or Revision provided under Sections 101 & 102 of the Juvenile Justice Act.

28. It would not be out of place to quote the Para 69 of the judgment passed by the Full Bench of this Court in the case of Rachna *(supra)*, which reads as under:

"69. If we look at the relevant Sections of J.J. Act, the object of the J.J. Act is pro-child legislation. The J.J. Act itself provides all remedial measures of rehabilitation and care to a child who is in need of care and protection. We attach equal importance to other Sections of the J.J. Act. They are emphatic, and in case the petitioner is aggrieved, and the corpus is sent to the shelter home arbitrarily, then the said situation may also be looked into and examined in the regular appeal or revision. Section 37 of J.J. Act clearly provides that the Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by the Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders. The framers have also consciously taken due care of child's wishes in case the child is sufficiently mature to take a view. It is the paramount responsibility of the Committee to take all necessary measures for taking into account the child's wishes after making due enquiry, which contemplates under Section 36 of J.J. Act and take final decision."

29. The order passed by the Committee pursuant to which the corpus has been sent to Children's Home is a judicial order and hence the detention of corpus cannot be termed to be illegal. Moreover, the order passed by the Committee is appealable. Thus, the instant Habeas Corpus Petition being not maintainable is liable to be dismissed.

30. In so far as the question of custody of the child is concerned, the ordinary remedy lies only under the Guardians and Wards Act, 1890. The jurisdiction of the Court is determined by whether the minor ordinarily resides within the area on which the Court exercises such jurisdiction. The Hon'ble Apex Court in the case of **Tejaswini Gaud** *(supra)* has held that there are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a Writ Court, which is summary in nature. What is important is the welfare of the child. In the Writ Courts, rights are determined only on the basis of the affidavits. In case if the Court is of the view that a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890 the Court may decline to exercise the extra-ordinary jurisdiction and direct the parties to approach the Civil Court.

31. Having regard to the foregoing discussion, the legal position which emerges is that in a case where the custody of the petitioner corpus has been handed over as per the order passed by the 'Child Welfare Committee', constituted under the Juvenile Justice Act, 2015, the said order cannot be assailed in a petition seeking a writ of habeas corpus.

32. We find that the petitioner corpus having been placed under the care of the

respondent no.3 and has now been boarded in Dayanand Bal Sadan, Motinagar, Lucknow, pursuant to an order passed by the 'Child Welfare Committee' in exercising powers under the Juvenile Justice Act, 2015 and the rules made thereunder, the custody which is presently with the said respondent cannot be said to be illegal or unlawful detention and the petition for a writ of habeas corpus would not be entertainable in the facts of the case.

33. Learned counsel for the petitioner has not been able to dispute the aforesaid legal position.

34. In view of aforesaid, this Court is not inclined to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India, so as to entertain the petition seeking a writ of habeas corpus.

35. The instant writ petition fails and is, accordingly, **consigned to record.**

36. The Sub-Inspector concerned, who is present before the Court as well as Mr. Ram Krishna Awasthi, In-charge of *'Rajkiya Bal Griha (Balak)'*, Mohan Road, Lucknow, are directed to ensure the safe return of the petitioner corpus to the Dayanand Bal Sadan, Motinagar, Lucknow from where he has been brought to the Court, as has been informed by the aforesaid In-charge of *'Rajkiya Bal Griha (Balak)'*, Mohan Road, Lucknow.

37. Before parting with the matter, in view of the fact that the father of the child/petitioner corpus has shown his serious concern regarding the well-being of his child and pressed for the custody of the child; this Court grants liberty to Mr. Surya Prakash Ojha, father of the child/petitioner corpus to file appropriate application under the provisions of the Guardians and Wards Act, 1890 before the competent court of having jurisdiction and in the event he files such an application, the competent court shall decide the same expeditiously. We further direct that in case such an application is made, an order at least with regard to visitation rights may be passed within a period of four weeks from the date of filing of such application before the court concerned. At the same time, we also grant liberty to the petitioner to assail the order of the 'Child Welfare Committee' under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules made thereunder, before the appropriate forum strictly in accordance with law.

38. However, we clarify that no observation made by this Court while passing the present order, would in any manner influence the proceedings, if any, under the Guardians and Wards Act, 1890 or any other proceeding under the Juvenile Justice Act, 2015 and the same shall be decided in accordance with law, on its own merits.

39. On the earnest request made by Mr. Surya Prakash Ojha, father of the petitioner corpus, for promoting the bond between the minor child and the father in a graded manner; we provide that he may be allowed to visit the Children's Home/ 'Dayanand Bal Sadan', to meet his child but within the premises of the same, for a period of three hours at least once a month, after seeking prior permission from the competent authority of the said Children's Home. However, the aforesaid meeting with the child/petitioner corpus shall be managed and monitored by the competent authority. During the said meeting, the respondent no.7 shall strictly follow the

instructions of the concerned authorities. The aforesaid arrangement shall continue till passing of appropriate orders by the competent Court on the said application seeking visitation rights.

(2025) 9 ILRA 302
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

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

Writ Tax No. 4542 of 2025

M/s Dcm Shriram Industries Ltd & Anr. ...Appellants

Versus

State Of U.P. & Anr. ...Respondents

Counsel for the Appellants:
Nishant Mishra, Vedika Nath

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Matter pertains to whether the respondent authorities were justified in not complying with the assessment order dated 01.10.2022, whereby refund of Rs. 5,00,00,000/- was directed for FY 2017–18, subject to the rule of unjust enrichment, and despite the law having already been settled in *Jain Distillery Private Limited vs. State of U.P.*, 2021 (10) ADJ 69.

Headnotes

Constitution of India - Article 226 - Refund pursuant to assessment order - No stay by Supreme Court - Taxation - Article 265 - Levy without authority of law impermissible - U.P. Value Added Tax Act, 2008 - S. 43 - Refund procedure - Buyer entitled where tax burden passed on - Interest on refund - Deferred pending Supreme Court decision - Supreme Court proceedings - No stay - High Court judgment binding across U.P.

Held: Supreme Court did not grant any stay on the judgment in Jain Distillery -Unless a superior Court passes an order of stay, the order of the court below remains binding on all the parties to the *lis* - State has no authority of law to retain the amount; refund mandatory, subject to S. 43 of U.P. VAT Act - Refund to be made to petitioner No. 2 (buyer) upon an indemnity bond, within eight weeks - Interest claim deferred until the decision of the Supreme Court - Writ petition disposed of - impugned order dated 19.07.2025 rejecting refund is quashed and set aside. (paras 4,5,6,7,8,9,10) (E-7)

Case Law Cited

Jain Distillery Private Limited vs. State of U.P. and Ors., **2021 (10) ADJ 69**

List of Acts

Constitution of India; Uttar Pradesh Value Added Tax Act, 2008; UPGST Act, 2017

List of Keywords

Inaction; assessment order; refund; unjust enrichment; legislative competence; ultra vires; authority of law; indemnity bond; principal amount; interest kept pending; quashed and set aside.

Case Arising From

ORIGINAL JURISDICTION:
Writ Tax No. 4542 of 2025, arising out of assessment order dated 01.10.2022 (FY 2017–18) and refund rejection order dated 19.07.2025.

Appearances for Parties

Advs. for the Appellants:
Nishant Mishra
Vedika Nath
Advs. for the Respondents:
C.S.C.

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

1. Heard Mr. Punit Agarwal, learned counsel appearing on behalf of the petitioners and Mr. Ankur Agarwal, learned Standing Counsel for the State.

2. This is an application filed under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the inaction on the part of the respondent authorities in complying with the assessment order dated 01.10.2022 for the Financial Year 2017?18. By the said order, a sum of Rs. 5,00,00,000/- has been directed to be refunded, subject to the rule of unjust enrichment. It is to be noted that the issue with regard to the taxability of the amount has already been settled by a Division Bench of this High Court in Jain Distillery Private Limited vs. State of U.P. and Ors., 2021 (10) ADJ 69. The relevant paragraphs 73 and 74 are delineated below:

"73. Consequently, all the writ petitions deserve to be allowed. It is declared, the State lost its legislative competence to enact laws, to impose tax on sales of ENA, upon the enactment of the 101st Constitution Amendment. Consequently, and upon considering Section 174(1) (i) of UPGST. Act, 2017, the impugned Notification dated 17.12.2019, insofar as it seeks to impose UPVAT on ENA, Rectified Spirit and SDS, is ultra vires, both on account of lack of (i) legislative competence and (ii) valid delegation. It is therefore quashed. Consequentially, all assessment Orders/Notices dated 30.6.2021, 21.6.2021, 8.6.2021, 15.6.2021, 11.6.2021, 7.7.2021, the (administrative) Circulars/letters dated 10.6.2021 and 11.6.2021, impugned in these writ petitions, holding otherwise are also quashed.

74. It is further directed, subject to applicability of the rule against unjust enrichment, any amount that may have been deposited by the petitioners (except petitioners claiming under this order, in Writ Tax 355 of 2020), by way of UPVAT on ENA on or after 1.7.2017, may be refunded to them, within a period of one month from today."

3. In light of the above judgment of the High Court, the assessment order was passed by the authority concerned. It is to be noted that a Special Leave Petition has been filed on behalf of the State Government, wherein an order was passed by the hon'ble Supreme Court which is delineated below:

"1 Issue notice.

2 Mr Kumar Dushyant Singh, learned counsel, accepts notice on behalf of the first respondent.

3 Counter affidavit be filed within a period of four weeks from the date of service.

4 Tag with SLP(C) No 7735 of 2022."

4. It is agreed by the parties appearing on both sides that the Supreme Court did not grant any stay on the order passed by the High Court, that is being assailed before the Supreme Court.

5. It is a trite law that unless a superior Court passes an order of stay, the order of the court below remains binding on all the parties to the lis. Furthermore, any judgment of the High Court of Allahabad is applicable to the entire State of Uttar Pradesh. Article 265 of the Constitution of India very categorically states that no tax can be levied without the authority of law. This principle has been reiterated in the judgment of the High Court in the Jain Distillery Private Limited (supra).

6. In light of the same, it is clear that the amount that has been held by the State Authorities is without the authority of law and is required to be refunded, subject to the provisions of the Uttar Pradesh Value Added Tax Act, 2008, specially Section 43, which provides for the procedure for disbursement of amount wrongly realized by the dealers as tax. In the present case, both the buyer and the seller of the goods are before the Court. The liability of the tax in the present case has been passed on to the buyer of the goods, as per the finding in the impugned order.

7. In light of the same, we direct the authority concerned to refund the money to the buyer, i.e., petitioner No.2, upon an indemnity bond being furnished by petitioner No.2 in accordance with law to the satisfaction of the authorities, within a period of eight weeks from the date.

8. Learned counsel appearing on behalf of the petitioner has also sought interest on the amount lying with the authorities to be paid. However, we are of the view that, at the present moment, only the principal amount should be returned to the petitioners and the interest be kept pending with the authorities and only be returned after the decision of the Hon'ble Supreme Court.

9. With the above directions, this writ petition is disposed of.

10. The impugned order dated 19.07.2025, rejecting the refund, is quashed and set aside.

(2025) 9 ILRA 304
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 3505 of 2024

Pradeep Kumar ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Shariq Shamim, Sr. Advocate

Counsel for the Respondents:
A.S.G.I., Prem Narayan Rai, Santosh Kumar Mishra

Issue for Consideration

1. Permissibility of considering the entire service record, and effect of non-considering the immediate previous service, while passing the order of compulsory retirement.
2. Scope of judicial review in the matter of compulsory retirement.

Headnotes

A. Service law – Compulsory Retirement – Immediate previous service record – Earlier, the Reviewing Officer promoted the petitioner relying upon it – Instead of considering this fact, the petitioner was compulsorily retired considering the entire service record – Validity challenged – Various disciplinary proceeding with multiple punishment orders were conducted against the petitioner – Relevance – Effect of Circular dated 09.07.2021 felt into consideration:

Held : In order to ascertain whether petitioner was fit to retain in service or was a case for compulsory retirement, his entire service record could be looked into, therefore, there is no illegality if entire record of petitioner was looked, therefore, a fact that petitioner was suffered with more than about 28 punishments within a period of 7 years would be a relevant fact to decide where petitioner was fit to continue or not in service – All clauses of Circular dated 09.07.2021 have to be read jointly – Later part of said Clause puts a caveat

also that it would be considered only if employee was promoted on basis of merit and not on basis of seniority cum fitness, whereas learned Senior Advocate for petitioner has not put up his case that promotion of petitioner was based on merit only and not on basis of seniority cum fitness, therefore, benefit as sought by the petitioner of said Clause cannot be granted. [Paras 12 and 16]

B. Service law – Constitution of India – Article 226 – Judicial review – Compulsory Retirement – Scope of interference:

Held : The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted – *H.C. (GD) Om Prakash's case* relied upon. [Para 18] (E-1)

Case Law Cited

C.I.S.F. v. H.C. (GD) Om Prakash, AIR Online 2022 SC 122 : (2022) 5 SCC 100; Jagat Narayan v. State of U.P. and others, AIR Online 2023 All 657; Birendra Singh Chauhan and others v. Food Corporation of India and others, 2023:PHHC:164004 **– referred to.**

List of Acts

Food Corporation of India Staff Regulation, 1971 **–** Clause No. 22(2); Circular dated 09.07.2021 – Clause 10 – Sub-clause IV and V.

List of Keywords

Compulsory retirement; Service record; Reviewing Committee; Promotion; Integrity and Character; Disciplinary proceeding; Warning; Recovery penalty; Increment; Punishment; Merit; Seniority; Fitness; Judicial review.

Case Arising From

Order of the Executive Director, North Zone, Food Corporation of India dated 18.08.2023 compulsorily retiring the petitioner.

Appearances for Parties

Advs. for the Petitioners : Sri Ashok Khare, Sr. Advocate; Mr. Shariq Shamim

Advs. for the Respondeents : Mr. Prem Narayan Rai, Mr. Santosh Kumar Mishra

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

1. Present case is arising out of an order dated 18.08.2023 passed by the Executive Director, North Zone, Food Corporation of India whereby petitioner was compulsorily retired in the interest of Corporation and public interest in general as well as an order dated 24.11.2023 whereby the representation of petitioner was rejected after examination by the Representation Committee.

2. Sri Ashok Khare, learned Senior Advocate assisted by Sri Shariq Shamim has not disputed a well settled position of law that order of compulsorily retirement is itself not an order of punishment nor it casts any stigma, however, he has argued that Reviewing Committee has not considered the detailed representation filed by the petitioner that his immediate previous service record was found satisfactory that he was found fit for promotion and was promoted also before impugned order was passed as well as broad criteria as mentioned in Circular dated 09.07.2021 issued by Food Corporation of India were also not followed and without assigning any reason, his representation was rejected by the Reviewing Committee.

3. Learned Senior Advocate has referred Clause No. 22(2) of Food Corporation of India Staff Regulation, 1971 as amended as well as Clause-10 of Circular dated 09.07.2021 and for reference, same are quoted below :-

"(2) (A) (1) Notwithstanding anything contained in this Regulation, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Corporation employee by giving him notice of not less than three months in writing or

three months' pay and allowances in lieu of such notice:

(a) If he is, in Category I & II service or post in a substantive, quasi-permanent or temporary capacity and had entered Corporation service befon attaining the age of 35 years, after he has attained the age of 50 years;"

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"10. Broad Criteria to be followed by the Review Committee:- *The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-*

(i) Corporation employees whose Integrity is doubtful shall be retired.

(ii) Corporation employees found to be Ineffective shall also be retired. The basic consideration In Identifying such Corporation employees should be their fitness / competence to continue in the post held.

(iii) No Corporation employee should ordinarily be retired on ground of Ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, In a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of a Corporation employee, It would be open to review such a case also for premature retirement: The sald Instruction of not retiring the Corporation employee within one year on the ground of Ineffectiveness except In case of sudden and steep. Ineffectiveness, but not on the ground of doubtful Integrity.

(iv) No Corporation employee should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Corporation employee is to be retired on grounds of doubtful Integrity. In case of those Corporation employees who have been promoted during the last 5 years, the previous entries in the APARs may be taken Into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.

(v) The entire service record of a Corporation employee should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier. The personal file of the Corporation employee may contain valuable material. Similarly, his work and performance could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the concerned Internal Committee puts together all the data available about Corporation employee and prepares a comprehensive brief for consideration by the Review Committee. Even un-communicated remarks in the APARs may be taken into consideration."

4. Learned Senior Advocate has referred contents of representation filed by the petitioner before Reviewing Committee that his ACR for year 2015, 2016, 2018 and 2019 was 'very good' and his integrity and character was not doubted to make him

unfit to continue in organization service and for public interest in general.

5. Learned Senior Advocate has also submitted that undisputedly petitioner has suffered 28 disciplinary proceedings between 2013 and 2020 and out of which two proceedings were dropped and in one case, a warning was given and in other case, increment was stopped for 2 years and for remaining 24 cases only, symbolic recovery penalty was imposed.

6. Learned Senior Advocate has further referred a judgment of High Court of Uttarakhand at Nainital as well as High Court of Punjab and Haryana wherein different High Courts have passed order in favour of employees that in a case where an employee was promoted in preceding 5 years, said fact would be an important factor for consideration of a representation filed against the compulsory retirement by the Reviewing Committee.

7. Learned Senior Advocate has also referred that petitioner was treated differently whereas there are example of other employees whose applications were accepted by Reviewing Committee and orders of compulsorily retirement were interfered.

8. Per contra, Sri Prem Narayan Rai, learned counsel for Union of India and Sri Santosh Kumar Mishra, learned counsel for respondent-FCI have referred a judgment passed by Supreme Court in **C.I.S.F. vs. H.C. (GD) Om Prakash, AIR Online 2022 SC 122 : (2022) 5 SCC 100** and a judgment passed by coordinate Bench of this Court in **Jagat Narayan vs. State of U.P. and others, AIR Online 2023 All 657** that entire record of employee-petitioner was rightly considered and it could not be limited only of last few years as well as procedure prescribed was followed by Reviewing Committee.

9. Learned counsel has further submitted that petitioner's service record is not unblemished and admittedly he has suffered various disciplinary proceedings wherein punishment awarded on multiple times, therefore, there was no illegality in impugned order.

10. I have considered above submissions and perused the record.

11. In order to consider rival submissions, few paragraphs of **H.C. (GD) Om Prakash (supra)** being relevant are quoted below :-

"**12.** In the judgment reported as Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219] , the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh Chopra v. State of Punjab [Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188] was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the "washed-off theory" i.e. the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] and it was observed that : (Babu Lal Jangir case [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 :

(2014) 2 SCC (L&S) 219] , SCC pp. 563-64, paras 22-23)

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [Badrinath v. State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13] is not correct and the observations of this Court in Gurdas Singh [State of Punjab v. Gurdas Singh, (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant."

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of U.P. [Ram Murti Yadav v. State of U.P., (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)

"6. ... The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement."

14. Thus, we find that the High Court has not only misread the judgment of

this Court in Baikuntha Nath Das [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order [Om Prakash v. Central Industrial Security Force, 2011 SCC OnLine Del 4388] of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight."

12. Aforesaid judgment is squarely applicable in present case that in order to ascertain whether petitioner was fit to retain in service or was a case for compulsory retirement, his entire service record could be looked into, therefore, there is no illegality if entire record of petitioner was looked, therefore, a fact that petitioner was suffered with more than about 28 punishments within a period of 7 years would be a relevant fact to decide where petitioner was fit to continue or not in service.

13. Court also takes note of relevant Regulation i.e. Clause-10 of Circular dated 09.07.2021 and its Clause-V has specifically provided that :-

"The entire service record of a Corporation employee should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier."

14. Therefore, an argument of learned Senior Advocate that his past record of 5 years was found good and he was found fit for promotion would have more weightage and earlier record which also includes multiple orders of punishment may be ignored, if accepted would be contrary to above referred Clauses of Circular dated 09.07.2021.

15. Facts of other cases wherein Reviewing Committee has passed favourable orders cannot be a ground to reconsider case of petitioner since their facts and their service records are not before this Court and each case is decided on basis of its own facts.

16. Court takes note of sub-clause-V of Clause – 10 of Circular dated 09.07.2021, however, Court is of the view that all clauses have to be read jointly. Clause-IV provides that **"***No Corporation employee should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory***"**, however, later part of said Clause puts a caveat also that it would be considered only if employee was promoted on basis of merit and not on basis of seniority cum fitness, whereas learned Senior Advocate for petitioner has not put up his case that promotion of petitioner was based on merit only and not on basis of seniority cum

fitness, therefore, benefit as sought by the petitioner of said Clause cannot be granted. In view of above, judgment of **Birendra Singh Chauhan and others vs. Food Corporation of India and others and other connected cases, 2023:PHHC:164004** would also not much helpful to the case of petitioner.

17. In view of above, on basis of facts of present case and on basis of joint reading of sub-Clause X, the argument raised by learned Senior Advocate for petitioner has no legal basis, therefore, no case is made out for interference.

18. Court is also of the view that facts of present case are squarely covered by **H.C. (GD) Om Prakash (supra)** which is against the petitioner since the scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted and since petitioner has failed to show that it was based on arbitrary or extraneous ground or affected by malafide, this Court in judicial review cannot sit as an Appellate Authority.

19. In view of overall circumstances, writ petition is **dismissed**.

(2025) 9 ILRA 310
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 6954 of 2019

Sandeep Raizada & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
A.K. Srivastava, Samir Sharma (Senior Adv.), Sudhir Dixit, Utkarsh Dixit

Counsel for the Respondents:
C.S.C., Sunil Kumar Mishra, Vinod Kumar Pandey

Issue for Consideration

Entitlement of Assistant Regional Manager appointed between 1986 to 1990 to get pension in the light of the GO dated 21.07.1972 issued u/s 34(1) of the Act of 1950, particularly when the UP State Road Transport Corporation Officers Service (General) Regulations, 1998 came into operation.

Headnotes

(A) Service law – Pension – Entitlement – Petitioners were appointed as Assistant Regional Manager between 1986 to 1990 in State Road Transport Corporation – Pension was claimed to be granted under the GO dated 21.07.1972 – Application of UP State Road Transport Corporation Officers Service (General) Regulations, 1998 felt into consideration :

Held : The declaration made in very beginning of Regulations, 1998 provides that it was in supersession of all Government Orders on subject, therefore, it was in supersession of the Government Order dated 21.07.1972 also, therefore, benefit of it, if any, to service conditions of petitioners would come to an end when Regulations, 1998 came into existence. After enforcement of Regulations, 1998 the services of petitioners would govern by its regulations only and, therefore, in case said regulations provides provision of pension to services of petitioners, it would be granted, otherwise no pension can be granted – There is no specific provision subsequent to commencement of Regulations, 1998 that petitioners were entitled for pension – In absence of any specific provision of service regulation to grant pension to petitioners, the relief sought cannot be granted. [Paras 55, 59 and 63 (B) and 63 (C) and 64]

(B) Service law – Constitution of India – Article 226 – Writ – Claim of pension was made – It's permissibility, particularly

when there is no rules – Exercise of writ power, extent of :

Held : Pension can be claimed only when it is permissible under the Rules or Schemes and per contra if there is no rule to support the claim of pension, the Writ Court cannot issue a mandamus directing an employer to provide pension to an employee, who is not covered under rules – *U.P. Roadways Retired Officials and Officers Association's case* of Apex court relied upon. [Para 50] (E-1)

Case Law Cited

U.P. Roadways Retired Officials and Officers Association Versus State of U.P. And Another, (2024) 9 SCC 33; General Manager, Mysore State Road Transport Corporation vs. Devraj Urs and another, (1976) 2 SCC 862; State of Madhya Pradesh and others vs. Shardul Singh, (1970) 1 SCC 108; State of Rajasthan and others vs. Mahendra Nath Sharma, (2015) 9 SCC 540 **– referred to.**

List of Acts

The Road Transport Corporation Act, 1950 – S. 3, 34 and 45; U.P. Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 – Reg. 4 and 39; U. P. State Roadways Organization (Abolition of Posts and Absorption of Employees) Rules, 1982 – Rules 1, 4 and 8; Uttar Pradesh State Road Transport Corporation Officers Service (General) Regulations, 1998 – Reg. 2, 17 and 25; GO dated 16.09.1960; GO dated 28.10.1960; GO dated 29.05.1972; GO dated 07.06.1972; GO dated 05.07.1972; GO dated 21.07.1972; Communications dated 23.10.2008 and 12.06.2009.

List of Keywords

History of roadways in State of Uttar Pradesh; Temporary department; Public transport; Temporary employee; Roadway Organization; Roadways Corporation; Assistant Chief Manager; Assistant regional Manager; Permanent post; Pension; Probation; Resolution; Amendment application; Supersession; Existing regulation; Board of Corporation; Appointment letter; Selection process; Service conditions; Deputation; Seniority; Government service; Appointing authority; Financial strength; Board of Director; Ambiguity.

Case Arising From

Orders and resolutions of Director of Board of Corporation rejecting the claim of pension.

Appearances for Parties

Advs. for the Petitioners : A.K. Srivastava, Samir Sharma (Senior Adv.), Sudhir Dixit, Utkarsh Dixit, Himanshu Agrawal

Advs. for the Respondeents : H. N. Singh, Senior Adv., Sunil Kumar Mishra, Vinod Kumar Pandey

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

Brief History of Roadways and it's Employees in State of U.P.

1. In order to consider real controversy involved in present case, it would be necessary to mention few facts about history of roadways in State of Uttar Pradesh and for that the Court takes some details mentioned by Supreme Court in a judgment passed in the case of **U.P. Roadways Retired Officials and Officers Association Versus State of U.P. And Another : (2024) 9 SCC 33** and other relevant facts from pleadings.

2. In 1947, Uttar Pradesh Roadways was created as a temporary department of State Government for providing public transport facilities and its employees were accordingly appointed temporarily.

3. By a Government Order dated 16.09.1960 directions were issued on "Terms and Conditions of Service of Temporary Employees in the U.P. Roadways - Revisions of". For reference said Government Order is reproduced hereinafter :-

"G.O. No. 3014 D/XXX- 135/59 dated Sept. 16, 1960 Subject: Terms and conditions of service of temporary

employees in the U.P. Roadways - Revisions of.

I am directed to say that the question of revising the terms and conditions of service of the Roadways employee, which is a nationalized commercial undertaking and has to work in conditions different from those prevailing in regular government offices, has been under the consideration of Government for some time past.

The passenger and goods services have to run irrespective of the fact whether it is a Sunday or a festival. The schedule of passenger services run by the State Undertaking cannot be altered off an on. In order to keep the Roadways services going the maintenance and repairs of vehicles has to be attend to even at odd hours at the workshops. At present the conditions of service of the employees of the U.P. Government Roadways and the Central Workshop, Kanpur are governed by the various rules and standing orders of Government applicable to other temporary government servants under the rule making powers of the Governor. In view of the special service conditions of employees of the Roadways it seems necessary to evolve a new set of service conditions for its employees which may be compatible with the nature of work and functions of the organization. Accordingly, in super session of all previous orders on the subject, the Governor has been pleased to pass the following orders prescribed revised terms and conditions of service of temporary employees of the U.P. Roadways including those detailed in para 2 below. The revised terms and conditions of service shall be applicable to all future entrants in the Roadways organization and shall be enforced in the manner mentioned hereinafter in the case of temporary employee including those on the work charge strength and paid on monthly basis.

(1) All temporary employees except those referred to in para 2 shall get one day's rest in every period of seven days in accordance with the rules to be framed by Government. In case the employees is deprived of any of the days or rest, he shall be allowed within the same or following month compensation holidays of equal number of the days of rest so lost.

(2) They shall be entitled to get one days paid holidays for every 20 days of work performed by them during the previous calender year, subject to the condition that the employee has worked for a period of 240 days or more during the previous calender year. In case the employees is not able to avail of full or part of the leave admissible to him during the calender year, it will be carried over to the following year, subject to a maximum of 30 days. (3) They shall got five days festival holidays in a calender year as prescribed by Government and subject to the rules to be framed for the purpose.

(4) They shall be paid extra wages at the rate of twice of ordinary rate of wages in respect of work performed by them beyond the prescribed hours of work.

(5) Their services are liable to termination on one month's notice on either side, or one month's pay in lieu thereof.

(6) In other respect the conditions of service will remain the same as at present.

The revised terms and conditions of services mentioned in para 1 above shall

not apply to the following category of employees:-

(a) All employees working in the offices establishment of the Asstt. General Manager, General Manager, Service Manager, Chief Mechanical Engineer, Roadways Central Workshop, Kanpur and the Head Quarter Office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side;

(c) Technical staff of the rank of Junior Foreman and above on the engineer side;

The above three categories of Roadways staff will continue to be treated as regular government servants and will be entitled to the benefits admissible to any other government servant of the same category.

3. The Roadways and Central Workshop employees to whom the revised service rules are being made applicable shall be entitled to the provident fund benefits according to the provisions of the Employees Provident Fund Act. For this necessary orders have already been issued separately in G.O. No. 1488-D/XXX 2198/59 dated July, 29, 1960. Immediate step may please be taken for the implementation of the orders issued in the above G.O. The employees governed by the new terms and conditions of service will continue to get facilities for medical treatment so far enjoyed by them. All future entrants shall also be entitled to facilities for medical treatment admissible to Government servants. The canteen and rest house facilities as may be prescribed by government shall also be made available to them in course of time.

4. These order shall come into force w.e.f. October 1, 1960 and shall apply to all future entrants in the service of the Roadways organization and also the existing temporary employees who accept to continue to work on the revised terms and conditions of service. The status of Roadways employees already made permanent remains unaffected. All the existing temporary employees except those mentioned in para 2 above may be asked to indicate in writing if the new service conditions mentioned above are acceptable to them. Those who accept the new terms and conditions of service will be required to fill in a separate acceptance for which will be kept with their service records. If, however, any of the employees do not accept the new terms their services are to be terminated in accordance with the terms of their employment. I am to suggest that the implications of the revised orders may be explained to all concerned by the General Managers and Asstt. General Mangers and Chief Mechanical Engineer and that necessary action may please be intimated forthwith in order to implement the above orders."

4. Subsequently a Government Order dated 28.10.1960 was issued, whereby pension was provided to employees of three categories of Roadways Organization. For reference the same is mentioned hereinafter:-

"GO No. 3567-P/XXX-2198/99 dated 28.10.1960 - In continuation of G.O. No. 30140/XXX-135-V/1959 dated 16.9.1960, I am directed to say that the question or declaration the permanent posts in the Roadways Organization

(including the Roadways Central Workshop Kanpur) as pensionable has been under consideration of Government for some time past. In this connection, the Governor has been pleased to order that the permanent gazetted and non-gazetted incumbents of the following three categories would be entitled to the contributory 10 Provident Fund cum Pension Rules:-

(a) The employees working in the office establishment of the Asstt. General Manager, General Managers, Service Managers, Chief Mechanical Engineer, Roadways Central workshop, Kanpur and the Headquarter office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

(c) Technical staff of the rank of Junior Foreman and above on the Engineering side.

2. The Governor has been further pleased to order, under note 3 Below Article 350 of the Civil Service Regulations that the rest of the permanent non-gazetted Employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable posts referred to above, will be eligible for Provident Fund benefits in accordance with the provisions of the Employees Provident Fund Act.

3. I am also to add that Temporary Employment of the categories mentioned in para 1 above will be entitled to Provident fund benefits as provided under the Employees Provident Funds Act. As and when they became permanent, they will have the option to elect the contributory Provident Fund cum Pension Benefits in lieu of Employees Provident Fund.

4. As regards the grant of Provident Fund Benefits to other temporary and work charges employees of the Roadways organization necessary orders have already been conveyed to you in G.O. No. 14880/XXX-219/59 dated 29.7.1960.

Sd/-
Jt. Secy.

Copy forwarded under U.P. Parivahan Ayukta (Lekha) U.P. Lucknow endorsement NO. C-935FA/594FA/57 dated 1.11.1960 to all the General Managers, Asstt. General Managers, Service Managers, Accounts Officers and all other concerned for information and necessary action."

5. The Roadways Corporation was constituted under Section 3 of the Road Transport Corporation Act, 1950 (hereinafter referred to as "Act, 1950") w.e.f. 01.06.1972. Section 3 of the Act, 1950 is mentioned herein after:-

"3. Establishment of Road Transport Corporations in the States. *-The State Government having regard to—*

(a) the advantages offered to the public, trade and industry by the development of road transport;

(b) the desirability of co-ordinating any form of road transport with any other form of transport;

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an

efficient and economical system of road transport service therein,

may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the Union territory of Delhi under such name as may be specified in the notification."

6. State Government has issued Government Order dated 29.05.1972 wherein name of existing posts and name of corresponding posts in Corporation were mentioned. Earlier post by the name of Assistant Chief Manager was referred as Assistant Regional Manager in Corporation. In November, 1978 Corporation appointed some persons on newly created posts of Assistant Regional Manager and it is claimed that said posts were pensionable.

7. The State of U.P. issued a Government Order dated 07.06.1972, where by all the employees of erstwhile Roadways holding permanent posts as per earlier referred Government Order dated 28.10.1960 were declared entitled for pension, except following five categories of employees:

"(i) Those working on daily wages;

(ii) Those appointed on ad-hoc basis;

(iii) Those who had not completed minimum service period prescribed for the post;

(iv) Those holding posts which were not declared pensionable;

(v) Those who had been removed from service after departmental inquiry and those had been found guilty of criminal charges."

8. The State of U.P. issued a Government Order dated 05.07.1972 on a subject "Constitution of Uttar Pradesh State Road Transport Corporation and merger of the Officers/Employees of the Transport Organization". For reference the same is extracted hereinafter :-

"No. 3414/TEES-2-170 N/72

Sender
Shri Girija Prasad Pandey
Commissioner & Secretary
Government of Uttar Pradesh

To
Chief Manager
Uttar Pradesh State Road Transport Corporation Lucknow
Dated: Lucknow July 5, 1972
Transport Section-2

Sub: Constitution of Uttar Pradesh State Road Transport Corporation and merger of the officers/employees of the Transport Organisation.

Sir,
After merger of the officers/employees working under Uttar Pradesh Roadways with State Road Transport Corporation, in connection with merger of services under the Corporation, I have been directed to issue the following, amending the Government order no. 3000/30-2-1 70/72 dated June 7, 1972:

(1) According to the provision of para (1) (A) of the above Government order, all those permanent or temporary

officers/employees who before the constitution of State Road Transport Corporation were in the services of State Roadways, their services would be considered in the Corporation on deputation. For this deputation no period is being fixed now.

(2) The State Road Transport Corporation has under section 45 of the Transport Corporation Act have not made rules about the service conditions till now in connection with the officers and employees under it. Therefore, leaving the above discussed Annexure 1 (1) A of the above Government order dated June 7, 1972, the remaining annexures would be considered dismissed. But whenever the Corporation would make rules regarding service conditions, then in them this assurance of the Government would be included that the service condition of the officers/employees under the Corporation in any condition would not be contemptuous than those conditions which were available to them under the Uttar Pradesh State Roadways and their government service period, their seniority under the corporation, promotion, fixation of pay, right concerning leave and financial benefits would be considered in that way only as they would have remained in their being in government service.

Yours faithfully
(Girija Prasad Pandey)
Commissioner & Secretary

No. 2114 (1)/Tees-2-170N/72

Copy submitted to Accountant General, Government of Uttar Pradesh, Allahabad, for information and necessary action.

By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary

No. 3414(2)/Tees-2-170N/72

Copy submitted to the following for information: -

(1) Transport Commissioner, Uttar Pradesh, Lucknow.

(2) Finance (Expenditure-7) Section

By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary"

9. The State of U.P. issued a Government Order dated 21.07.1972 under Section 34(1) of Act, 1950 on a subject in regard to selection procedure of posts under Road Transport Corporation. Section 34 of Act, 1950 and contents of Government Order dated 21.07.1972, being much relevant for the purpose of adjudication of the present case, are extracted hereinafter:-

"34. Directions by the State Government.-*(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.*

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from

any general instructions issued under sub-section (1) except with the previous permission of the State Government."

Government Order dated 21.07.1972

"सं0 3123/30/1/19एन/72

श्री भगवान स्वरूप सक्सेना,
उप सचिव,
उत्तर प्रदेश शासन ।

सेवा में,
प्रधान प्रबन्धक,
उत्तर प्रदेश राज्य सड़क परिवहन निगम,
लखनऊ।

दिनांक: लखनऊ: जुलाई 21, 1972

परिवहन अनुभाग-1

विषयः- राज्य सड़क परिवहन निगम में पदो के चयन सम्बन्धी प्रकिया।

महोदय,

आपके पत्र संख्या 40/सचिव/72, दिनांक 28 जून, 1972 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि रोड ट्रान्सपोर्ट कारपोरेशन एक्ट 1950 की धारा 34 (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने, राज्याल, उत्तर प्रदेश सडक परिवहन निगम से पुरामर्श करने के उपरान्त एतद्वारा यह निर्देश देते है कि 01 जून, 1972 के पश्चात निगम द्वारा अपने सेवा नियम तैयार करने तक, रडिवेज के उन पदो के लिए, जो निगम के गठन के पूर्व लोक सेवा आयोग की परिधि में थे, नियुक्ति आदि के लिए अर्हताए तथा अन्य सेवा शर्ते वही बनी रहेगी जैसी कि निगम की स्थापना के पूर्व उत्तर प्रदेश राजकीय रोडवेज में थी। नये या रिक्त पदों पर चयन के लिए पदों की भर्ती विज्ञप्ति पर निगम द्वारा स्थापित चयन समिति, अभ्यर्थियों का चयन कर निगम को नियुक्ति के लिए संस्तुति करेगी।

भवदीय,
ह०/ भगवान स्वरूप सक्सेना,
उप सचिव ।

संख्या- 3123 (1)/30- तदिद्दनांकित
प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः-

1. महालेखाकार, उत्तर प्रदेश, इलाहाबाद।
2. परिवहन आयुक्त, उत्तर प्रदेश, लखनऊ।

ह०/-
भगवान स्वरूप सक्सेना,
उप सचिव ।"

10. In exercise of power under Section 45(2)(c) of Act, 1950 the State of U.P. framed U.P. Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 *(hereinafter referred to as "Regulations, 1981")*, whereby service provisions were framed for the employees of the Corporation. Section 45 of Act, 1950 and Regulations 4 and 39 of Regulations, 1981, being relevant, are reproduced hereinafter:

"45. Power to make regulations.- *(1) A Corporation may with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.*

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(a) the manner in which, and the purposes for which, persons may be associated with the Board under Section 10;

(b) the time and place of meetings of a the Board and the procedure to be

followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser;

(d) the issue of passes to the employees of the Corporation and other persons under Section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under Section 19;

(f) the period after the expiration of which unclaimed articles or goods may be sold by public auction;

(g) the regulation of the carriage of passengers and goods in the road transport services of the Corporation."

"4. Option by the employees of the erstwhile Government Roadways Department and other employees. - *(1) An employee of the erstwhile U.P. Government Roadways Department who was placed on deputation with the Corporation and who has or is deemed to have offered for absorption in the Service of the Corporation in accordance with Rule 4 of the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorptions of Employee) Rules, 1982 (hereinafter referred to as the said, Rules), shall with effect from August 28, 1982, sand so absorbed, and shall, accordingly cense to be an employee of the State Government with effect from the said date.*

Provided that the terms and conditions of service of the employees so absorbed in the Service of the Corporation shall, subject to the provisions of G.O. No. 3414/XXX-2-170- N-72, dated July 5, 1972, and the said rules be governed by these regulations.

(2) (i) Existing employees, who are not covered by sub- regulation (1) or those who are not exempted under Regulation 2, shall within one month of the commencement of these regulations, inform the appointing authority or such authority as the General Manager may in this behalf appoint whether or not they want to be governed by these regulations.

(ii) If they opt or fail to exercise their option for being governed by these regulations, their terms and conditions of appointment, so far as they are inconsistent with these regulations, shall stand rescinded:

Provided that, in respect of workmen where any of the provisions of these regulations is less favourable than the provisions of the U.P. Industrial Disputes Act, 1947, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Factories Act, 1948 or of any other Act applicable to them, the provisions of such Act shall apply.

(iii) If such persons do not opt for being governed by these regulations, their services may be terminated in accordance with the terms of their appointment."

"39. Pension and other retirement benefits-*(1)(i) Subject to the provisions of clause (ii) of this sub-regulation, an employee of the Corporation shall not be entitled to pension, but he shall*

be entitled to the retirement benefits mentioned in sub-regulation (2).

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation, shall be entitled to pension and other retirement benefits in terms of the G.O. No.3414/302-170-N-72, dated July 5, 1972.

(iii) Such employees who have come in the service of the Corporation on pensionable posts on 1st June, 1972 or after that and now those posts have been declared non-pensionable under this Rule; the Corporation would contribute in the Provident Fund of such employees as desired under the provisions of Employees Provident Fund Scheme, 1952.

(2) Without prejudice to the provisions of sub- regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits:

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

(ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;

(iii) Amount due under Group Insurance Scheme, 1976;

(iv) One free family pass in a year for journey within the State;

(v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;

(vi) Any other benefit that may be allowed by the Corporation from time to time. "

11. Rules 1, 4 and 8 of "The Uttar Pradesh State Roadways Organization (Abolition of Posts and Absorption of Employees) Rules, 1982" *(hereinafter referred to as "Rules, 1982"),* being relevant, are reproduced hereinafter:

"1. Short title and commencement.- *(1) These rules may be called the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorpotion of Employees) Rules, 1982.*

(2) They shall come into force at once."

"4. Option to employees and absorption in Corporation service.-*(1) An employee of the U. P. State Roadways Organisation, who was placed on deputation with the Corporation and who does not wish to be absorbed in the service of the Corporation, shall, within 3 months from the notification of these Rules in the Gazette, intimate the Secretary to Government in the Transport Department that he does not wish to be so absorbed.*

(2) Every other employee who does not give an intimation, in accordance with sub-rule (1), shall be deemed to have exercised his option for absorption in the service of the Corporation.

(3) An employee, who is deemed to have opted for absorption in the service

of the Corporation, in accordance with sub-rule (2), shall stand so absorbed with effect from the date of expiry of three months from the date of notification of these rules and his service under the State Government shall, with effect from the same date cease."

"8. Consequences where employee is absorved in the service of the Corporation.--*(i) Leave account of the employee shall be transferred to the Corporation and the Corporation shall not be entitled to receive any contribution or compensation on this account from the Government.*

(ii) Government shall bear the liability for pension, (which does not include family pension), and for gratuity, (if admissible to an employee), in proportion to the qualifying service in the Government rendered by an employee before the date of his being placed on deputation with the Corporation, the entire liability for family pension shall be borne by the Corporation.

(iii) Employees provident fund scheme.--In respect of an employee who did not hold any pensionable post but was a member of an Employee's Provident Fund Scheme, the liability for contribution required to be made by an employer, for the period prior to 1-6-1972 shall be that of the Government and with effect from 1-6-1972, it shall be that of the Corporation.

(iv) An employee shall, from the date of his absorption, cease to subscribe to his General Provident Fund account, if any, under the State Government and the amount to his credit in the fund, together with interest thereon, according to rules till the month preceding the date of transfer of his account shall be transferred to his new account to be opened under the Corporation."

12. In the year 1986, Corporation on basis of parameters determined by a report submitted by Pallavan Transport Consultancy Services for determination of number of Officers required in comparison to numbers of bus services, a considered proposal was prepared by Corporation for creation of 135 temporary posts of Assistant Regional Manager, which was adopted in the 98th meeting of the Board of Directors of Corporation and accordingly Corporation by an order dated 17.10.1986 created referred posts on temporary basis. The 'Proposal', it's 'Adoption' and 'Order' are reproduced hereinafter :-

Proposal

"निगम के पुर्नगठन के सन्दर्भ में विभिन्न विधाओं के सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों के सृजन का प्रस्ताव ।

उत्तर प्रदेश राज्य सड़क परिवधन निगम के कार्य कलापों की विकेन्द्रीय कृत किये जाने के उद्देश्य से निगम की विभिन्न क्षेत्रीय इकाइयों / जोनल इकाइयों को त्रि स्तरीय सूचि से दो स्तरीय सूचि में परिवर्तित किये जाने का प्रस्ताव निदेशक मंडल की 96 वीं वैठक में प्रस्तुत किया गया था। निदेशक मन्डल ने संकल्प संख्या 1480/86 द्वारा उक्त का परिक्षण कर संस्तुति करने हेतु एक उप समिति का गठन किया था। उप समिति द्वारा अपनी बैठक दिनांक 2-6-06 में प्रोजेक्ट रिपोर्ट का विस्तारपूर्वक अध्ययन करने के उपरांत संशोधनों सहित योजन का क्रियान्वन करने हेतु अतिरिक्त पदों के सृजन किये जाने का प्रस्ताव शासन को अग्रतारित करने की अनुमति प्रदान की गयी थी। उप समिति के उक्त निर्णय का अनुमोदन निदेशक मण्डल ने अपनी बैठक दिनांक 20-6-86 में संकल्प संख्या 1498/86 द्वारा किया था। निदेशक मण्डल के अनुमोदनोपरांत 6 प्रधान प्रबन्धक, 18 उप प्रधान प्रबन्धक, 42 क्षेत्रीय प्रबन्धक एवं 135 सहायक क्षेत्रीय प्रबन्धक स्तर के अधिकारियों के पदों के सृजन का प्रस्ताव शासन को अग्रसारित किया गया था। शासन स्तर पर विस्तारपूर्वक विचार विमर्श के मध्य यह इंगित किया गया की शार्वजनिक उद्यम विभाग के द्वारा जारी

शासनादेश संख्या 306/44-2- उपं वे०रि०/1983 दिनांक 3-10-83 के क्रम में जारी शासनादेश संख्या 456 / चौवालीस/2-85 दिनांक 15-4-85 के अंतर्गत निदेशक मण्डल ऐसे समस्त पदों जिनका अधिकतम वेतन रुपया 1770/- से कम है, का सृजन तथा चयन करने हेतु सक्षम है। शासन स्तर से उपरोक्त जानकारी दिये जाने के उपरांत अब इन पदों के सृजन की औपचारिक स्वीकृति निर्देशक मण्डल द्वारा ही दी जानी है। अतएव निदेशक मण्डल से अनुरोध है कि 135 सहायक क्षेत्रीय प्रबन्धक स्तर के अधिकारियों (वेतनमान रुपया 900-1770) के पदों के सृजन किये जाने के प्रस्ताव पर विचार कर निर्णय लेने की अनुकम्पा करें ।

उल्लेखनीय है कि पल्लवन ट्रांसपोर्ट कंसल्टेन्सी सर्विसेस द्वारा 0.07 अधिकारी प्रतिशत की आवश्यकता का मानदंड निर्धारित किया है। उसके विपरीत परिवहन निगम में इस समय 0.03 अधिग्रारी प्रति बस कार्यरत है। स्पष्टतः देश के अन्य बड़े परिवहन निगमों जैसे आंध्र प्रदेश, मध्य प्रदेश, गुजरात एवं कर्णाटक परिवहन निगमों की तुलना में यह अनुपात बहुत ही कम है। आंध्र प्रदेश में यह अनुपात 0.07, महाराष्ट्र में 0.06, गुजरात में 0.06, कर्णाटक में 0.75 है। उत्तर प्रदेश राज्य सड़क परिवहन निगम में स्टाफ अधिकारी अनुपात 1.70 कर्मचारी प्रति अधिकारी आता है जब कि अन्य बड़े परिवहन निगमों में यह लगभग 1.10 से लेकर 1.20 के बीच में है। उपरोक्त परिप्रेक्ष्य में ही 135 पदों के सृजन किये जाने का प्रस्ताव प्रस्तुत किया जा रहा है। उपरोक्त पर होने वाले ब्यय का प्राविधान आंशिक रूप से वर्ष 1986-87 के आय ब्यय में किया गया है तथा कमी पड़ने पर 86-87 के पुनरीक्षित बजट में शेष धनराशि का प्राविधान कर लिया जायेगा ।

निदेशक मण्डल से अनुरोध है वि उपरोक्त प्रस्ताव का अनुमोदन प्रदान करने की अनुकम्पा करे।

वि0 के0 दीवान
प्रबन्ध निदेशक

संकल्प

निदेशक मण्डल ने विचारोपरांत सहायक क्षेत्रीय प्रबन्धक स्तर के विभिन्न विधाओं के 135 पदों के सृजन किये जाने की अनुमति प्रदान की।"

Adoption

"मद संख्या । : निगम के पुनर्गठन के सन्दर्भ में विभिन्न विधाओं के सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों के के सृजन का प्रस्ताव ।"

Order

"कार्यालय प्रबन्धक निदेशक,

उत्तर प्रदेश परिवहन निगम, लखनऊ

।

संख्या 6466 सीएचक्यू/86/540 सीएचई/85 दिनांकः अक्टूबर 17, 1986

कार्यालय आदेश

उत्तर प्रदेश सड़क परिवहन निगम निदेशक मंडल की 98वीं बैठक दिनांक 29-8-96 के संकल्प संख्या 1518/86 के निर्णय के अनुसार सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों को अस्थाई रूप से दिनांक 28-2-87 तक के लिए वेतनमान रुपया 900-40-1100-50-1350-60-1770 में सृजित किया जाता है।

(वी०के० मित्तल)
प्रबन्ध निदेशक"

13. All petitioners were appointed against referred created posts initially on temporary basis on probation on different dates between 1986 to 1990 and got retired between 2013 to 2023, except one petitioner who will retire on 30.11.2026. Copy of appointment letter of Petitioner-1 is annexed alongwith this writ petition and condition no. 2 thereof being relevant is mentioned hereinafter:

''2-श्री रायजादा की सेवाएं रोड ट्रांसपोर्ट कारपोरेशन एक्ट 1950 के अंतर्गत बनायी जाने वाली सेवा विनियमावली के अधीन होगी और जब तक उक्त सेवा विनियमावली अन्तिम रूप से लागू नहीं हो जाती तब तक उनकी सेवाएं शासन के उन नियमों के अधीन होगी जो सरकारी सेवकों पर लागु होती हैं।"

14. During the service of petitioners, U.P. State Road Transport Corporation *(hereinafter referred to as "UPSRTC")* with previous sanction of State Government in exercise of powers conferred by Clause (c) of sub-section (2) of Section 45 of Act, 1950 and in supersession of all exiting regulations and orders on the subject makes the Uttar Pradesh State Road Transport Corporation Officers Service (General) Regulations, 1998 *(hereinafter referred to as "Regulations, 1998")*, for regulating the conditions of service of officers appointed to UPSRTC. Relevant Regulations 2, 17 and 25 are extracted hereinafter:-

"2. Application.- *Except as otherwise expressed or implied, these regulations with such amendments or modifications, as may be made by the Board from time to time, shall apply to the officers who stood absorbed or have opted for service under the Corporation and to the officers appointed by the Corporation on or after first day of June, 1972 whether:-*

(a) in a substantive capacity, or

(b) in an officiating capacity against a regular vacancy, or

(c) on adhoc basis, or

(d) in any other capacity whatsoever."

"17. Superannuation/Retirement Benefits.- *The Board may decide as to the type of provident fund to be established for the welfare of the officers, namely, Contributory Provident Fund, Employees Provident Fund and Family Pension Scheme or General Provident Fund and/or Family Pension Scheme. The officer's contribution, the employer's contribution, the method of deduction, regulations regarding withdrawal shall be such as may be provided in the specific regulations prepared and approved by the Board for the establishment and operation of such provident fund schemes."*

"25. Effect of Enforcement of these regulations.-*(1) These regulations shall apply to all the officers of the Corporation who are in the service of the Corporation on the date of the commencement of these regulations and to those who join the said service after such commencement.*

(2) The officers who are in the service of the Corporation shall give an undertaking within a month from the date of the commencement of these regulations that they have read and understood the regulations and accept the same. On refusal to accept these regulations, the Appointing Authority may consider termination of their employment on the basis of the terms and conditions of the employment. All the officers who join the said service after such commencement shall be required to give the said undertaking before joining the service in the Corporation."

15. The State Government issued a Government Order dated 20.10.2004, whereby an order was passed in regard to pension to employees appointed between 01.06.1972 to 19.06.1981, when Regulations, 1981 were enforced. The same is mentioned hereinafter:

"विषय-उत्तर प्रदेश राजकीय रोडवेज संगठन के स्थान पर दिनांक 01-06-1972 को उत्तर प्रदेश राज्य सड़क परिवहन निगम के गठन के फलस्वरूप दिनांक 01.06.1972 से

दिनांक 28.7.1982 के मध्य उत्तर प्रदेश राज्य सड़क परिवहन निगम में नियुक्त कार्मिको को पेंशन की अनुमन्यता के सम्बन्ध।

महोदय

उपर्यक्त विषय पर मुझे यह कहने का निदेश हुआ है कि उत्तर प्रदेश राज्य सडक परिवहन निगम मुख्यालय लखनऊ के पार्श्वांकित पत्रों में प्राप्त प्रस्ताव पर सम्यक रूप में विचार किया गया और यह निर्णय लिया गया है कि उत्तर प्रदेश राज्य सड़क परिवहन निगम में दिनांक 01-06-1972 से उत्तर प्रदेश राज्य सडक परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियिमावली 1981. जो दिनांक 19-06-1981 को प्रवृत्त हुई है, के मध्य ऐसे पद जो उत्तर प्रदेश राजकीय रोडवेज' संगठन में दिनांक 01-06-1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली- 1981 के विनिमय-39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19-6-1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

2- उक्त कार्मिको के पेंशन पर होने वाले समस्त व्ययभार का वहन उत्तर प्रदेशस राज्य सड़क परिवहन निगम द्वारा अपने संसाधनों से स्वयं किया जायेगा एवं पेंशन का भुगतान परिवहन निगम द्वारा अपने माध्यम से कराया जायेगा और इसका कोई भी अंश राज्य सरकार द्वारा वहन नहीं किया जायेगा।

3- यह आदेश वित्त विभाग के अशासकीय पत्र संख्या-ई-9-524/दस-2004, दिनांक 29-9-04 में प्राप्त उनकी सहमति से जारी किया जा रहा है।"

16. There were some communications from State Government to Corporation on the issue of grant of pension. For reference communications dated 23.10.2008 and 12.06.2009 are reproduced hereinafter:

Communication dated 23.10.2008

"परिवहन निगम मुख्यालय,
लखनऊ

संख्या (जी) सीएचक्यू/02टीसी दिनांक 23 अक्टूबर 2008

सेवा में,
उप सचिव
परिवहन अनुभाग-1.
उ०प्र० शासन,
लखनऊ।

विषय : उ०प्र० राज्य सड़क परिवहन निगम के अधिकारियों की सेवा शर्तों के सम्बन्ध में प्रत्यावेदन ।

महोदय

कृपया उपरोक्त विषयक शासन के पत्र संख्या-सी एस 132/30-1-2008) दिनांक 09-09-2008 का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा श्री कमलेशः चन्द्र दिवाकर, मा० विधायक, बिल्हौर (ब०स०पा०) के दिनाकः रहित पत्र तथा उसके साथ सलग्न महामंत्री उ०प्र० राज्य सड़क परिवहन निगम अधिकारी संगठन, लखनऊ के पत्र दिनांक 03-06-2008 की छायाप्रति प्रेषित करते हुए प्रकरण में आख्या उपलब्ध कराने के निर्देश दिए गए हैं।

उ०प्र० राज्य सड़क परिवहन निगम अधिकारी संगठन लखनऊ के उक्त पत्र दिनांक 03-06-2008 में उल्लिखित बिन्दुओं पर स्थिति निम्नवत् हैः-

1-आख्या की आवश्यकता नहीं है।

2-राजकीय रोडवेज में सहायक प्रधान प्रबन्धक का पद क्षेत्रों में विद्यमान था। निगम गठन के पश्चात् इस पद का परिवर्तित पदनाम सहायक क्षेत्रीय प्रबन्धक है। दिनांक 01-06-1972 के पूर्व सहायक प्रधान प्रवन्धक परिवर्तित पदनाम सहायक क्षेत्रीय. प्रबन्धक के पद राजकीय रोडवेज के थे और यह पद लोक सेवा आयोग, उत्तर प्रदेश की परिधि में थे।

3-दिनांक 01.06.1972 को राजकीय रोडवेज से उ०प्र० राज्य सड़क परिवहन निगम का गठन किया गया और परिवहन संगठन के अधिकारियों व कर्मचारियों का उ०प्र० परिवहन निगम में विलिनीकरण शासनादेश संख्या-राज्य सड़क 3414 / तीस-2-170/72 दिनांक 05-7-1972 निर्गत किया गया।

4-उ०प्र० राज्य सड़क परिवहन निगम का गठन होने के पश्चात शासनादेश सख्या-3123/30-1-19एम/72 दिनाक

21 जुलाई, 1972 निर्गत किया गया। इस शासनादेश में उ०प्र० राज्य सड़क परिवहन निगम से परामर्श करने के पश्चात भर्ती आदि हेतु अर्हताए, सेवा शर्ते निगम स्थापना के पूर्व उ०प्र० राजकीय रोडवेज में जैसी थी उसी भाति नये रिक्त पदों पर चयन किए जाने के लिए निर्धारित होगी, के आदेश दिए गए।

5-राज्य सड़क परिवहन निगम अधिनियम, 1950 (अधिनियम सख्या 64 सन् 1950) की धारा 45 की उप धारा (2) के खण्ड (ग) द्वारा प्रदत्त शक्ति का प्रयोग करके और इस विषय पर समस्त विद्यमान विनियमों और आदेशों का अधिक्रमण करके, उत्तर प्रदेश राज्य सड़क परिवहन निगम, राज्य सरकार की पूर्व मंजूरी से उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी सेवा में नियुक्ति की और नियुक्त अधिकारियों की सेवा की शर्तों और वेतनमानों तथा उसमें नियुक्त अधिकारियों की सेवा की शर्तों को विनियमित करने के लिए उत्तर प्रदेश राज्य सड़क परिवहन नियम अधिकारी सेवा चिनियमावली, 1998 प्रख्यापित की गयी है।

6-आख्या की आवश्यकता नहीं है।

7-आख्या की आवश्यकता नहीं है।

8-शासनादेश संख्या 3123/-1-19एम/72 दिनांक 21-07-72 के द्वारा यह प्राविधान किया गया है कि जो 01 जून 1972 के पश्चात निगम द्वारा अपेन सेवा नियम तैयार करने तक रोडवेज के उन पदों के लिए जो निगम गठन के पूर्व लोक सेवा आयोग की परिधि में नियुक्ति आदि के लिए अर्हतायें व अन्य सेवा शर्त वही बनी रहेंगी, जैसी कि निगम की स्थापना के पूर्व राजकीय रोडवेज में थी। नये या रिक्त पदों पर चयन के लिये पदों की भर्ती विज्ञप्ति कर निगम द्वारा स्थापित चयन समिति अभ्यर्थियों का चयन कर निगम को नियुक्त लिये संस्तुत करेगी।

उ०प्र० राज्य सडक परिवहन निगम अधिकारी सेवा विनियमावली वर्ष, 1998 में प्रख्यापित हुई है। वर्ष 1998 के पूर्व शासन दिनांक 21-07-1972 द्वारा निर्धारित प्रक्रिया के अन्तर्गत नियुक्त कार्मिकों को पेंशनरी आदि का लाभ शासकीय कार्मिकों की भांति राजकीय कोषागार से दिये जाने पर विचार किया जा सकता है।

9-वर्तमान में वर्ष 1998 से बनाई गयी अधिकारी सेवा विनियमावली वर्ष 1998 से नियुक्त अधिकारी पर लागू होगी।

भवदीया,

ह0 23.10.00

(नीलम अहलावत)

मुख्य प्रधान प्रबन्धक (प्रशासन)''

Communication dated 12.06.2009

"सख्या 808/तीस-1-2009-5(108)/08टीसी

प्रेषक

संध्या तोमर,

विशेष सचिव,

उत्तर प्रदेश शासन ।

सेवा में,

प्रबन्ध निदेशक,

उ०प्र० राज्य सड़क परिवहन निगम,

उत्तर प्रदेश, लखनऊ।

परिवहन अनुभाग-1 लखनऊ. दिनांकः 12 जून, 2009

विषयः अधिकारी सेवा विनियमावली, 1998 के प्रख्यापन के मध्य नियुक्त हुए, समस्त अधिकारियों को पेंशनरी लाभ दिये जाने सम्बन्धी मांग पर कार्यवाही कराया जाना।

महोदय

उपर्युक्त विषयक महामन्त्री उत्तर प्रदेश राज्य सड़क परिवहन निगम, अधिकारी सगठन, लखनऊ के सलग्न पत्र दिनाक 16-05-2009 के अवलोकन से विदित होता है कि-

(1) 01.06.1972 को उत्तर प्रदेश सरकार के विभाग "उत्तर प्रदेश राजकीय रोडवेज" को समाप्त करके उत्तर प्रदेश राज्य सड़क परिवहन निगम का गठन किया गया।

(2) रोडवेज के पदों को समाप्त करने एवं इसके कर्मचारियों को उत्तर प्रदेश राज्य सडक परिवहन निगम में आमेलित करने के लिए दिनांक 28-04-1982 को एक नियमावली जारी की गयी।

(3) 01.06. 1972 के पहले रोडवेज के कतिपय पद लोक सेवा आयोग के क्षेत्रान्तर्गत थे। निगम बन जाने के बाद यह

पद निगम के क्षेत्रान्तर्गत आ गये परन्तु इन पदों के लिए निगम सम्भवतः तत्काल कोई सेवा-विनिमय नहीं बना सका। कोई समस्या न हो सम्भवतः इसीलिए 21-07-1972 को सरकार ने एक निर्देश जारी किया कि 01-06-1972 से निगम द्वारा सेवा नियम तैयार करने तक नियुक्ति की एवं अन्य सेवा शर्त यहीं रहेंगी जो निगम बनने के पहले उत्तर प्रदेश राजकीय रोडवेज में थी।

(4) उक्त प्रकार के अधिकारियों के लिये उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी सेवा नियमावली 1998 लागू हुई।

(5) उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी संगठन यह चाहते हैं कि 01-06-1972 से उत्तर प्रदेश राज्य परिवहन निगम अधिकारी सेवा नियमावली 1998 के प्रभाव में आने के बीच नियुक्त अधिकारियों को पेशन का लाभ दिया जाये।

2-इस सम्बन्ध में आपसे यह कहने का मुझे निर्देश हुआ है कि प्रथम दृष्टया अधिकारी संगठन की उक्त मांग औचित्यपूर्ण प्रतीत होती है। अतः कृपया नियमान्तर्गत कार्यवाही करने का कष्ट करें। इस सम्बन्ध में कोई कार्यीही हो और शासन से किसी निर्देश/आदेश की आवश्यकता हो तो कृपया औचित्यपूर्ण प्रस्ताव बोर्ड से अनुमोदित करवाकर शासन को भेजने का कष्ट करें।

भवदीय,
ह0
संध्या तोमर,
विशेष सचिव,

सलग्नक- यथोक्त"

17. The Petitioners have approached earlier before this Court by way of filing Writ-A No. 22832 of 2018, which was disposed of finally vide order dated 25.10.2018 with a liberty to State Government and Board of Directors of UPSRTC to consider the case of petitioners for pension. Relevant part of the order is extracted hereinafter:

"5. Heard learned counsel for the parties.

6. Certain facts relevant for demand are beyond the pale of dispute. The Road Transport Corporation Act was incorporated by the State Government in exercise of power vested in Section 3 of the Road Transport Corporation Act, 1950. Section 34 of the Road Transport Corporation Act, 1950 deals with the conditions of service of the employees of the State Government and the U.P. State Road Transport Corporation and the powers of the State Government in regard thereto. The relevant provision is being extracted hereunder for ease of reference :-

"34. Direction by the State Government.-

(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government."

7. The service conditions of the officers of the U.P. State Road Transport Corporation were promulgated on 10.9.1998. The service rules for the officers of the U.P. State Road Transport Corporation are called U.P. State Road Transport Corporation Officers Service (General) Regulations 1998. All the

petitioners were appointed prior to the promulgation of the service rules on 10.9.1998.

8. In exercise of powers under Section 34(1) of the Road Transport Corporation Act, 1950, an order was taken out by the Governor on 21.7.1972. The Government Order dated 21.7.1972 which is referrable to Section 34 (1) of the Road Transport Corporation Act, 1950 provides that from 01.06.1972 till the framing of the service rules by the U.P.S.R.T.C., the posts in the U.P.S.R.T.C. which came within the purview of the U.P. Public Service Commission prior to the incorporation of the U.P.S.R.T.C., shall be governed and regulated by the service rules applicable to the employees of the U.P. State Roadways, prior to the incorporation of the U.P.S.R.T.C. The claim of the petitioners is that since they were appointed subsequent to 1.6.1972 and prior to the promulgation of the service regulations framed by the U.P. State Road Transport Corporation in 1998, they are entitled to be governed by the G.O. dated 21.7.1972. They claim pensionary benefits on the foot of the Government Order dated 21.7.1972.

9. Copious correspondence was exchanged between the U.P. State Road Transport Corporation and authorities of the State Government regarding the aforesaid pensionary rights claimed by the petitioner on the footing of the government order of 21.7.1972. By way of an exemplar a communication dated 23.10.2008 sent by the Chief General Manager, (Administration), U.P. State Road Transport Corporation to the competent authority the State Government recorded that there were a number of posts which came within the purview of U.P. Public Service Commission and prior to the creation of the corporation and continue to exist in the corporation. The communication dated 23.10.2008 further records that the service regulations of the officers of the U.P. State Road Transport Corporation were framed in the year 1998. Hence officers appointed from 01.06.1972 to 1998 would be entitled for pensionary benefits. The letter recommends consideration of the case of such officials to be granted pension from the State exchequer. In a communication sent by the Special Secretary, Govt. of U.P. to the Managing Director, U.P. State Road Transport Corporation dated 12.6.2009 states that prima facie the demands of the officers for pension has merit. On 24.11.2017 the Managing Director, U.P. State Road Transport Corporation sent a communication to the Principal Secretary, Transport Department, Govt. of U.P., Lucknow. The letter dated 24.11.2017 after giving a brief back drop of the aforesaid controversy and communications in this regard refers to the Government Order dated 21.07.1972, taken out under Section 34(1) of the Road Transport Corporation Act, 1950 and other communications between the State Government and the U.P. State Road Transport Corporation. The letter dated 24.11.2017 most importantly records that the U.P. Road Transport Corporation Ltd. will bear the financial burden of payment of pension to its officers. The pension bill of similarly situated pensioners in the U.P.S.R.T.C. is being borne by the U.P.S.R.T.C. Such pensioners are being paid out by the financial resources of the U.P. State Road Transport Corporation. Finally the aforesaid interactive correspondence between the State Government and the U.P. State Road Transport Corporation culminated in a letter of the State Government sent by the Under Secretary,

Govt. of U.P., on 25.1.2018. The letter directs the Managing Director of the U.P. State Road Transport Corporation, Lucknow to process and forward the resolution of the Board of Directors of the U.P. State Road Transport Corporation for grant of pensionary benefits to the officers appointed between 1.6.1972 and 2.10.1998.

10. The meeting of Board of Directors was convened on several dates including 17.7.2018 and 18.9.2018. However, on both the dates the Board of Directors failed to pass a resolution in this regard.

11. Considering the submissions made at the Bar and the relief claimed in the instant writ petition, no useful purpose would be served by keeping this writ petition pending in this court. With the consent of learned counsel for the parties the matter is being disposed of finally at the admission stage.

12. The claim of the petitioners for pension has to be decided by the competent authority. The claim has been made on the footing of the government order issued under the Road Transport Corporation Act, 1950 and correspondence between the State Government and the U.P. State Road Transport Corporation, on the subject. The decision cannot be postponed indefinitely.

13. The matter is remitted back to the Board of Directors of the U.P. State Road Transport Corporation. The Board of Director are arrayed as respondent no.3 in the instant writ petition. A mandamus is issued to the Board of Directors to the U.P. State Road Transport Corporation commanding the Board to pass a resolution in regard to the claim of the pension of the officers appointed between the period 1.6.1972 to 2.10.1998. The Board shall take a decision in the matter within a period of three months from the date of receipt of certified copy of this order along-with fresh representation made by such officers in that regard. The final resolution passed by the Board in the matter shall be communicated to the State Government within period of one month from the date of the resolution. The State Government shall take consequential action on the resolution passed by the State Government as expeditiously as possible preferably within a period of six months from the date of receipt of such resolution of the Board of Directors.

14. It is clarified that this court has not gone into veracity or the legitimacy of the claim of the petitioners for grant of pension. Grant of pensionary benefits is the prerogative of the Board of Directors of the U.P.S.R.T.C. and the State Government. Grant of pension and other service conditions are policy decisions. It is not the province of the courts to issue any directions to adopt any preferred policy option. It is for the State Government and the Board of Directors of the U.P.S.R.T.C. to take the final decision. There are huge financial implications which need to be considered by the competent authorities. All relevant considerations have to be factored in before a final decision is made. The rights of the petitioners in the light of the discussion in the preceding paragraphs is limited to the consideration of their case. The nature of the decision in this regard is the sole province of the said authorities. It is for the Board of Directors and the State Government to apply their minds independently and take a decision in that regard.

15. The writ petition is disposed of finally."

18. In pursuance of referred liberty, the petitioners submitted a joint representation dated 03.12.2018 to the Board of Directors, UPSRTC through its Chairman.

19. The Director of Board of Corporation in its 220th meeting on 25.01.2019 considered the issue of grating pension to officers appointed between 01.06.1972, when Corporation came into existence, and 03.10.1998, when Regulations, 1998 came into force. Board took decision on said proposal and on ground that the Corporation has suffered loss between April, 2018 to December, 2018 of about Rs. 98.10 crores in comparison of same period in the year 2017, rejected claim of granting pension. For reference the 'Proposal' and 'Decision' is mentioned hereinafter:

"परिवाहन निगम के गठन दिनांक 01.06.1972 से अधिकारी सेवा नियमावली, 1988 के प्रख्यापन दिनांक 10.09.1998 के मध्य नियुक्त हुये परिवहन निगम के अधिकारियों को पेंशनरी लाभ प्रदान किये जाने के सम्बंध में मा० उच्च न्यायालय के निर्णय दिनांक 25.10.2018 के अनुपालन के सम्बंध में।	*निदेशक मण्डल द्वारा एजेण्डा टिप्पणी का अवलोकन कर निम्नवत् निर्णय लिया गयाः-* *1. वर्तमान में 01.06.1972 से 19.06.1981 के मध्य नियुक्त हुये व निगम की पेंशन प्राप्त कर रहे अधिकारियों को अनुमन्य की गयी पेंशन सुविधा शासन के निर्देशों के अनुरूप है या नहीं यह जाँच कराकर समुचित प्रस्ताव निदेशक मण्डल के समक्ष प्रस्तुत किया जाय।* *2. वर्तमान वित्तीय वर्ष में सातवां वेतनमान अनुमन्य किये जाने एवं डीजल मदों में हुई अप्रत्याशित वृद्धि से निगम की लाभदायकता पर प्रतिकूल प्रभाव पड़ा है। जिससे निगम की लाभदायकता में कमी आयी है, जिसमें कि अप्रैल 2018 से दिसम्बर 2018 तक की अवधि में गत वर्ष 2017 की इसी अवधि में हुये रू0 98.10 करोड़ के लाभ के सापेक्ष रू0 24.82 करोड़ की हानि हुयी है। इस परिस्थिति में प्रस्तुत प्रस्ताव पर होने वाले अतिरिक्त व्यय भार के दृष्टिगत संस्तुति किया जाना औचित्यपूर्ण नहीं पाया गया।"*

20. Initially this writ petition was filed to challenge the aforesaid resolution dated 17.01.2019 with prayer to grant pension to petitioners who were appointed between 01.06.1972 to 03.10.1998.

21. During pendency of this writ petition this Court has passed orders on 17.03.2023 and 11.04.2023 and for reference the same are reproduced hereinafter:

Order dated 17.03.2023

"Heard Sri Samir Sharma, learned Senior Advocate assisted by Sri Ajay Kumar Srivastava and Sri S.K. Misra, learned counsel for the respondents/UPSTRC.

The dispute with regard to payment of pension to the petitioners was before this Court in Writ 'A' No.22832 of 2018 (Sandeep Raizada and 26 others Vs. State of U.P. & 4 others). The relevant portion of the said judgment dated 25.10.2018, reads as under:-

"6. Certain facts relevant for demand are beyond the pale of dispute. The Road Transport Corporation Act was incorporated by the State Government in exercise of power vested in Section 3 of the Road Transport Corporation Act, 1950.

Section 34 of the Road Transport Corporation Act, 1950 deals with the conditions of service of the employees of the State Government and the U.P. State Road Transport Corporation and the powers of the State Government in regard thereto. The relevant provision is being extracted hereunder for ease of reference :-

"34. Direction by the State Government.?

(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government."

7. The service conditions of the officers of the U.P. State Road Transport Corporation were promulgated on 10.9.1998. The service rules for the officers of the U.P. State Road Transport Corporation are called U.P. State Road Transport Corporation Officers Service (General) Regulations 1998. All the petitioners were appointed prior to the promulgation of the service rules on 10.9.1998.

8. In exercise of powers under Section 34(1) of the Road Transport Corporation Act, 1950, an order was taken out by the Governor on 21.7.1972. The Government Order dated 21.7.1972 which is referrable to Section 34 (1) of the Road Transport Corporation Act, 1950 provides that from 01.06.1972 till the framing of the service rules by the U.P.S.R.T.C., the posts in the U.P.S.R.T.C. which came within the purview of the U.P. Public Service Commission prior to the incorporation of the U.P.S.R.T.C., shall be governed and regulated by the service rules applicable to the employees of the U.P. State Roadways, prior to the incorporation of the U.P.S.R.T.C. The claim of the petitioners is that since they were appointed subsequent to 1.6.1972 and prior to the promulgation of the service regulations framed by the U.P. State Road Transport Corporation in 1998, they are entitled to be governed by the G.O. dated 21.7.1972. They claim pensionary benefits on the foot of the Government Order dated 21.7.1972.

9. Copious correspondence was exchanged between the U.P. State Road Transport Corporation and authorities of the State Government regarding the aforesaid pensionary rights claimed by the petitioner on the footing of the government order of 21.7.1972. By way of an exemplar a communication dated 23.10.2008 sent by the Chief General Manager, (Administration), U.P. State Road Transport Corporation to the competent authority the State Government recorded that there were a number of posts which came within the purview of U.P. Public Service Commission and prior to the creation of the corporation and continue to exist in the corporation. The communication dated 23.10.2008 further records that the service regulations of the officers of the U.P. State Road Transport Corporation were framed in the year 1998.

Hence officers appointed from 01.06.1972 to 1998 would be entitled for pensionary benefits. The letter recommends consideration of the case of such officials to be granted pension from the State exchequer. In a communication sent by the Special Secretary, Govt. of U.P. to the Managing Director, U.P. State Road Transport Corporation dated 12.6.2009 states that prima facie the demands of the officers for pension has merit. On 24.11.2017 the Managing Director, U.P. State Road Transport Corporation sent a communication to the Principal Secretary, Transport Department, Govt. of U.P., Lucknow. The letter dated 24.11.2017 after giving a brief back drop of the aforesaid controversy and communications in this regard refers to the Government Order dated 21.07.1972, taken out under Section 34(1) of the Road Transport Corporation Act, 1950 and other communications between the State Government and the U.P. State Road Transport Corporation. The letter dated 24.11.2017 most importantly records that the U.P. Road Transport Corporation Ltd. will bear the financial burden of payment of pension to its officers. The pension bill of similarly situated pensioners in the U.P.S.R.T.C. is being borne by the U.P.S.R.T.C. Such pensioners are being paid out by the financial resources of the U.P. State Road Transport Corporation. Finally the aforesaid interactive correspondence between the State Government and the U.P. State Road Transport Corporation culminated in a letter of the State Government sent by the Under Secretary, Govt. of U.P., on 25.1.2018. The letter directs the Managing Director of the U.P. State Road Transport Corporation, Lucknow to process and forward the resolution of the Board of Directors of the U.P. State Road Transport Corporation for grant of pensionary benefits to the officers appointed between 1.6.1972 and 2.10.1998.

10. The meeting of Board of Directors was convened on several dates including 17.7.2018 and 18.9.2018. However, on both the dates the Board of Directors failed to pass a resolution in this regard.

11. Considering the submissions made at the Bar and the relief claimed in the instant writ petition, no useful purpose would be served by keeping this writ petition pending in this court. With the consent of learned counsel for the parties the matter is being disposed of finally at the admission stage.

12. The claim of the petitioners for pension has to be decided by the competent authority. The claim has been made on the footing of the government order issued under the Road Transport Corporation Act, 1950 and correspondence between the State Government and the U.P. State Road Transport Corporation, on the subject. The decision cannot be postponed indefinitely.

13. The matter is remitted back to the Board of Directors of the U.P. State Road Transport Corporation. The Board of Director are arrayed as respondent no.3 in the instant writ petition. A mandamus is issued to the Board of Directors to the U.P. State Road Transport Corporation commanding the Board to pass a resolution in regard to the claim of the pension of the officers appointed between the period 1.6.1972 to 2.10.1998. The Board shall take a decision in the matter within a period of three months from the date of receipt of certified copy of this order along-with fresh representation made by such

officers in that regard. The final resolution passed by the Board in the matter shall be communicated to the State Government within period of one month from the date of the resolution. The State Government shall take consequential action on the resolution passed by the State Government as expeditiously as possible preferably within a period of six months from the date of receipt of such resolution of the Board of Directors.

14. It is clarified that this court has not gone into veracity or the legitimacy of the claim of the petitioners for grant of pension. Grant of pensionary benefits is the prerogative of the Board of Directors of the U.P.S.R.T.C. and the State Government. Grant of pension and other service conditions are policy decisions. It is not the province of the courts to issue any directions to adopt any preferred policy option. It is for the State Government and the Board of Directors of the U.P.S.R.T.C. to take the final decision. There are huge financial implications which need to be considered by the competent authorities. All relevant considerations have to be factored in before a final decision is made. The rights of the petitioners in the light of the discussion in the preceding paragraphs is limited to the consideration of their case. The nature of the decision in this regard is the sole province of the said authorities. It is for the Board of Directors and the State Government to apply their minds independently and take a decision in that regard.

15. The writ petition is disposed of finally."

Despite there being such specific directions requiring the Board to consider the claim of the petitioners, the Board in its 220th Meeting dated 17.01.2019 by Resolution No. 41 did not consider the claim of the petitioners on merits; rather refused to consider the same on the ground that the Corporation is not in a financial condition to pay the same. The said decision of the Board in itself is a gross violation of the directions given by this Court.

The present petition was filed in the year 2019 and even during the last four years the Board has refused to take any decision on merits in itself speak the conduct of the respondents. Hence, a cost of Rs.25,000/- with regard to each petitioner is to be paid by the Managing Director, U.P. State Road Transport Corporation, Lucknow on or before 11.04.2023.

The Managing Director, U.P. State Road Transport Corporation, shall also ensure that the decision on merits is taken by the Board in furtherance of the directions of this Court in the judgment dated 25.10.2018 in Writ 'A' No.22832 of 2018, through his personal affidavit before this Court by the next date. In case of failure to comply with any of the direction, the Managing Director, U.P.S.R.T.C., shall be present in the Court on the next date.

List this case on 11.04.2023."

Order dated 11.04.2023

"By order dated 17.03.2023 passed by this Court, the following directions were issued:

"Despite there being such specific directions requiring the Board to consider the claim of the petitioners, the Board in its 220th Meeting dated 17.01.2019 by

Resolution No. 41 did not consider the claim of the petitioners on merits; rather refused to consider the same on the ground that the Corporation is not in a financial condition to pay the same. The said decision of the Board in itself is a gross violation of the directions given by this Court.

The present petition was filed in the year 2019 and even during the last four years the Board has refused to take any decision on merits in itself speak the conduct of the respondents. Hence, a cost of Rs.25,000/- with regard to each petitioner is to be paid by the Managing Director, U.P. State Road Transport Corporation, Lucknow on or before 11.04.2023.

The Managing Director, U.P. State Road Transport Corporation, shall also ensure that the decision on merits is taken by the Board in furtherance of the directions of this Court in the judgment dated 25.10.2018 in Writ 'A' No.22832 of 2018, through his personal affidavit before this Court by the next date. In case of failure to comply with any of the direction, the Managing Director, U.P.S.R.T.C., shall be present in the Court on the next date.

List this case on 11.04.2023."

Today, an application for exemption along with compliance affidavit is filed. In the application for exemption there is no mention that order dated 17.03.2023, has been complied with regard to both directions. It merely prays for exemption of personal appearance of the Managing Director, U.P.S.R.T.C. today. In Paragraph 03 of the affidavit, it is stated that with regard to payment of cost amounting to Rs.25,000/- to each petitioner by order dated 17.03.2023, the same is assailed in Special Appeal No.182 of 2023 filed on 28.03.2023.

Learned counsel for respondents/Corporation admits that till date no stay order is granted in the said special appeal. Paragraph 03, of application also states that some more time may be granted to pay cost and case be fixed after the date fixed in special appeal. The prayer on the face of it is vague and cannot be accepted. Two days' further time is granted to the respondents to comply with the order for payment of cost as directed by order dated 17.03.2023, failing which the Managing Director, U.P.S.R.T.C. shall be present in the Court. It goes without saying that costs paid shall be subject to the decision passed in special appeal.

Put up on 13.04.2023, amongst top ten cases in the additional cause list."

22. Subsequently, the Board passed two resolutions dated 06.04.2023 and 19.10.2023, therefore, two amendment applications were filed being Amendment Applications No. 18 of 2023 and 22 of 2023 to challenge the resolution of Board of Directors of Respondent-Corporation dated 06.04.2023 and 18.10.2023. These amendment applications were allowed vide order dated 02.05.2024 and accordingly amended writ petition was filed. For reference 'Proposal' and 'Resolution' adopted by Board of Directors dated 06.04.2023 and 18.10.2023 are reproduced hereinafter:

Proposal and Resolution dated 06.04.2023

"3. रिट याचिका	*याचीगणों की पेंशन अनुमन्यता की मांग*

संख्याः 6954/2019 संदीप रायजादा व 26 अन्य बनाम स्टेट आफ यू०पी० व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 17.03.2023 के अनुपालन में अधिकारी सेवा विनियमावली 1998 के प्रख्यापन दिनांक 10.09.1998 के मध्य नियुक्त हुए अधिकारियों को पेन्शनरी लाभ प्रदान किये जाने हेतु निदेशक मण्डल द्वारा मेरिट पर निर्णय लिये जाने के सम्बन्ध में।	के सम्बन्ध में निदेशक मण्डल ने सम्यक विचारोपरान्त पाया किः- 1- शासनादेश संख्या- 1470/30-2-2004-218/96, दिनांक 20.10.2004 में उल्लेख है कि उत्तर प्रदेश राज्य सड़क परिवहन निगम में दिनांक 01.06.1972 से उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली- 1981 जो दिनांक 19.06.1981 को प्रवृत्त हई है. के मध्य ऐसे पद जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली-1981 के विनियम 39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा। 2- शासनादेश संख्या-3123/30/1/19एन/72 दिनांक 21.07.1972 में यह उल्लिखित है कि दिनाक 01.06.1972 के पश्चात निगम द्वारा अपने सेवा नियम तैयार करने तक, रोडवेज के उन पदों के लिए जो निगम के गठन के पूर्व लोक सेवा आयोग की परिधि में थे, नियुक्ति आदि के लिए अर्हताएं तथा अन्य सेवा शर्ते वहीं बनी रहेंगी जैसी कि निगम की स्थापना के पूर्व उत्तर प्रदेश राजकीय रोडवेज में थीं। याचीगण शासनादेश दिनाक 21.07.1972 के प्रभावी होने के बाद नियुक्त हुए है अगर शासनादेश प्रभावी है भी तो उन पर प्रभावी है जो उस तिथि को नियुक्त थे न कि वो जो भविष्य में नियुक्त होंगे। इस सबंध में उल्लेखनीय है कि वर्ष 1985 में उ० प्र० राज्य सड़क परिवहन निगम में पल्ल्चन स्कीम लागू होने पर निदेशक मण्डल की 98वीं बैठक दिनांक 29.08.1986 में पारित 'सकल्प संख्या-1518/86 द्वारा सहायक क्षेत्रीय प्रबन्धक स्तर के विभिन्न विधाओं के 135 पदों का सृजन किया गया। उक्त पद सृजित होने के उपरात प्रबन्ध प्रशिक्षणार्थियों (Management trainee) का चयन किया गया और उनके द्वारा 01 वर्ष का सफलतापूर्वक प्रशिक्षण पूर्ण करने के फलस्वरूप सहायक क्षेत्रीय प्रबन्धक के पद पर वर्ष 1986 से नियुक्तिया की गयी। उपरोक्त वर्णित स्थिति से यह स्पष्ट है कि शासनादेश दिनाक 21.07.1972 उन पदों हेतु है जो निगम के गठन से पूर्व उ०प्र० लोक सेवा आयोग की परिधि में थे, जबकि याचीगणों की नियुक्ति निदेशक मण्डल द्वारा नवसृजित 135 पदों पर पूर्व से भिन्न पद्धति से की गयी। 3 अधिकारी सेवा विनियमावली 1998 पूर्व व्यापी प्रभाव (Retrospective effect) से लागू है, जिसमें उसके प्रभावी होने की तिथि 01.06.1972 वर्णित है। याचीगणों के नियुक्ति पत्र में वर्णित है कि उनकी सेवा भविष्य में बनने वाली विनियमावली के अधीन होगी। अधिकारी सेवा (सामान्य) विनियमावली, 1998 में पेंशन अनुमन्य करने हेतु बाध्यकारी नहीं है। अतः उपरोक्त समरत तथ्यों के दृष्टिगत दिनांक 19.06.1981 से दिनाक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशन अनुमन्य किया जाना औचित्यपूर्ण नहीं है।"

Proposal and Resolution dated 18.10.2023

"परिवाहन निगम के गठन दिनांक 01.06.1972 से उ० प्र० राज्य सड़क परिवहन निगम में अधिकारी सेवा विनियमावली 1998 लागू होने की तिथि दिनांक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशनरी लाभ दिये जाने के सम्बन्ध में निदेशक मण्डल के समक्ष प्रस्तुत संशोधित एजेण्डा टिप्पणी।	*निदेशक मण्डल द्वारा एजेण्डा टिप्पणी का अवलोकन कर प्रस्तावित संकल्प का निम्नवत अनुमोदन प्रदान किया गया:-* *निदेशक मण्डल ने दिनांक 28 अप्रैल 1982 के पश्चात तथा दिनांक 10 सितंबर 1998 के पूर्व नियुक्त अधिकारियों के पेंशन की देयता के बारे में विस्तृत रूप से गहन चर्चा के पश्चात इस निर्णय पर पहुचा कि सरकारी सेवकों पर लागू सेवा शर्ते जो राजकीय परिवहन संगठन के कर्मचारियों पर लागू थी उन सबका अन्तिम रूप से The UP State Roadways Organisation (Abolition of Post and Absorption of the Employees) Rules 1982 जो दिनाक 28 अप्रैल 1982 को लागू हुआ के द्वारा सगठन के समस्त सृजित पदों पर नियुक्त अधिकारियों को जो निगम में प्रतिनियुक्ति पर कार्यरत किये गये को अन्तिम रूप से दिनांक 28 अप्रैल 1982 को निगम के कर्मचारी/अधिकारी के रूप में सम्मिलित कर लिया गया और राजकीय सगठन के समस्त पद समाप्त कर दिये गये और सरकारी सेवकों की सेवा शर्ते केवल उन कर्मचारियों/ अधिकारियों पर लागू थी, जो 29 अप्रैल 1982 के पूर्व राजकीय संगठन के पदों पर नियुक्त किये गये थे।* *दिनाक 28 अप्रैल 1982 के बाद निगम के द्वारा विभिन्न पदों का सृजन किया गया और उन पर नियुक्तिया नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति विनियमावली जो निगम के द्वारा बनायी जायेगी, उसके अधीन होगी और उन्हें विनियमावली मान्य होगी। उक्त शर्त के साथ ही विनियमावली 1998 बनाने से पूर्व नियुक्त अधिकारियों ने सेवा स्वीकार किया, इस तरह से उक्त शर्त उन पर बाध्यकारी है।* *The U.P State Roadways Organisation (Abolition of Post and Absorption of the Employees) Rules, 1982 जो दिनाक 03 अक्टूबर 1998 को विज्ञापित की गयी जो दिनाक 01.06 1972 से लागू है और उन कर्मचारियों / अधिकारियों को छोडकर जो राजकीय सगठन में नियुक्त या राजकीय सगठन के पद पर नियुक्त किये गये थे और जिन्हें दिनांक 28 अप्रैल 1982 को निगम में सम्मिलित किया गया, को छोडकर अन्य समस्त कर्मचारियों/अदिकारियों पर लागू है और विनियमावली में पेंशन की व्यवस्था न होने के कारण तथा अंशदायी भविष्य निधि की व्यवस्था होने के कारण पेंशन देय नहीं है क्योंकि विनियम 25 सपठित विनियम 17 के तहत विनियमावली समस्त अधिकारियों को स्वीकार है और किसी भी अधिकारी ने विनियमावली को स्वीकार करने से इन्कार नहीं किया है।"*

23. A third amendment application, being Amendment Application No. 25 of 2024, was filed to challenge the amended agenda dated 27.06.2024 but neither it was pressed nor considered by this Court. However, for reference said resolution is also reproduced hereinafter:

"मद संख्या- 38 परिवाहन निगम के गठन दिनांक 01.06.1972 से उ०प्र० राज्य सड़क परिवहन निगम में अधिकारी सेवा विनियमावली 1998 लागू होने की तिथि दिनांक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशनरी लाभ दिये जाने के सम्बन्ध में निदेशक मण्डल के समक्ष प्रस्तुत संशोधित एजेण्डा टिप्पणी:-

1. निदेशक मण्डल को अवगत कराना है कि विगत में निदेशक मण्डल की 246वीं बैठक दिनांक 18.10.2023 को मद सं० 20 पर प्रस्तुत एजेण्डा पर पारित संकल्प (अनुलग्नक-1) के क्रम में दिनांक 19.06.1981 से दिनांक 28.04.1982 के मध्य नियुक्त अधिकांश कार्मिकों द्वारा पेंशन अनुमन्य/पात्रता के सम्बन्ध में प्रार्थना पत्र प्रस्तुत / प्रेषित किये जा रहे हैं।

2. इस सम्बन्ध में निदेशक मण्डल को अवगत कराना है कि शासनादेश सं0-1470/30-2-2004-218/96 दिनांक 20.10.2004 (अनुलग्नक-2) में निम्नवत उल्लेख है:-

उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली 1981, जो दिनांक 19.06.1981 को प्रवृत्त हुयी है, के मध्य ऐसे पद, जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली-1981 के विनियम-39 (1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

3 . उक्त के अतिरिक्त निदेशक मण्डल यह भी अवगत कराना है कि The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorbtion of Employees) Rules 1982 जो अधिसूचना संख्या-2051/XXX-2-170-N-72 दिनांक 28.04.1982 (अनुलग्नक-3) द्वारा अधिसूचित की गयी हैं, के विनियम 2 (ii) व 3 (i) में क्रमशः कार्मिकों व इन नियमों के लागू होने को निम्नलिखित प्रकार परिभाषित किया गया है:-

2 (ii) 'Employee' means the Government servant employed in U.P. State Roadways Organisation and working on deputation with the Corporation.

3 (i) These rules shall apply to the U.P. State Roadways Organisation employees working on deputation with the Uttar Pradesh State Road Transport Corporation.

4. उपरोक्त विनियमों से स्पष्ट है कि The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorbtion of Employees) Rules 1982 योवल उन्हीं कार्मिकों पर लागू थे, जो उ०प्र० राज्य सड़क परिवहन निगम के गठन दिनांक 01.06.1972 के पूर्व उ०प्र० राजकीय रोडवेज संगठन में कार्यरत थे तथा उ०प्र० राज्य सड़क परिवहन निगम के गठन दिनांक 01.06.1972 के पश्चात परिवहन निगम में प्रतिनियुक्ति (deputation) पर माने गये थे।

5. उ०प्र० राज्य सडक परिवहन निगम के गठन दिनांक 01.06.1972 के पश्चात परिवहन निगम द्वारा नियुक्त कार्मिकों पर The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules 1982, अधिसूचना संख्या-2051/XXX-2-170-N-72 दिनांक 28.04.1982 को अधिसूचित की गयी है, लागू नहीं हैं।

6. दिनांक 18.10.2023 को निदेशक मण्डल के समक्ष प्रस्तुत एजेण्डा एवं पारित संकल्प के अनुसार परिवहन निगम द्वारा दिनांक 28.04.1982 के बाद निगम द्वारा सृजित पदों के विरूद्ध नियुक्तियां प्रारम्भ की गयी एवं नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति, विनियमावली, जो निगम के द्वारा बनायी जायेगी, उसके आधीन होगी और उन्हें नियमावली मान्य होगी।

7. उपरोक्त के सम्बन्ध में स्पष्ट करना है कि निगम द्वारा अपने गठन दि० 01.06.1972 के उपरान्त ही, निगम द्वारा

सृजित पदों के विरूद्ध नियुक्तियां प्रारम्भ कर दी गयी थी तथा नियुक्ति पत्र में इस शर्त का भी समावेश किया जाना प्रारम्भ कर दिया गया था कि यह नियुक्तियां निगम द्वारा रोड ट्रान्सपोर्ट कारपोरेशन एक्ट-1950 की धारा 45 के अन्तर्गत बनाये जाने वाले नियम पूर्णतया प्रत्येक पर लागू होंगे।

उदाहरणार्थ दिनांक 28.04.1982 से पूर्व वर्ष 1978 में निगम द्वारा सहायक क्षेत्रीय प्रबन्धकों के पद सृजित करते हुए इन सृजित पदों के विरूद्ध सीधी भर्ती से नियुक्त किये गये अधिकारियों के नियुक्ति आदेश संख्या-6313/सी.एच.क्यू. /78/ 404 / सी. एच.ई/ 78 दिनांक 04.11.1978 (अनुलग्नक-4) में यह स्पष्ट उल्लेख है कि यह नियुक्तियाँ निगम द्वारा सृजित पदों के विरूद्ध की जा रही है एवं इस नियुक्ति आदेश के शर्त सं0-5 में यह अंकित है कि यह नियुक्तियाँ निगम द्वारा बनायी जाने वाली सेवा नियमावली के अधीन होंगी।

शासनादेश सं0-1470/30-2- 2004-218/96, दिनांक 20.10.2004 के अनुसार, उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली 1981, जो दिनांक 19.06.1981 को प्रवृत्त हुयी है. के मध्य ऐसे पद, जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली-1981 के विनियम-39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

अतः निदेशक मण्डल से अनुरोध है कि उपरोक्त वर्णित स्थिति से अवगत होते हुए प्रस्तुत एजेण्डा टिप्पणी का अनुमोदन प्रदान करने का कष्ट करें।"

Submission on behalf of Petitioners

24. Sri Samir Sharma, learned Senior Advocate assisted by Sri A.K. Srivastava and Sri Himanshu Agrawal, learned counsel for petitioners, submitted that service conditions of petitioners who were appointed much prior to Regulations, 1998 came into force, were protected by Government Order dated 21.07.2072 that it will remain same as applicable to the earlier appointees when Corporation came into existence. No subsequent provision or regulations could change the conditions of service, which also include pension. Petitioners cannot be put in adverse situation on basis of any subsequent regulations on the subject.

25. Learned Senior Advocate by referring Government Order dated 29.05.1972 submitted that a post earlier known as Sahayak Pradhan Prabandhak was renamed as Assistant Regional Manager after Corporation came into existence. Therefore, the posts on which petitioners were appointed were earlier existed and service provisions applicable to said posts are squarely applicable to petitioners also.

26. Learned Senior Advocate by repeatedly referring Government Order dated 21.07.1972 has mentioned that it was issued under Section 34(1) of Act, 1950 after consultation with Corporation and on behalf of Governor, therefore, it shall be binding upon Corporation. In this regard he refers a judgement passed by Supreme Court in the case of **General Manager, Mysore State Road Transport Corporation vs. Devraj Urs and another, (1976)2 SCC 862** that since it was already acted upon, therefore, the subsequent Regulations, 1998 would have no bearing on it.

27. Learned Senior Advocate by referring another judgment passed by Supreme Court in **State of Madhya Pradesh and others vs. Shardul Singh, (1970)1 SCC 108** submitted that conditions of service would also include pension. By referring letter dated 23.10.2008 and 26.10.2017 he submitted that seniority list shows that post of Assistant Regional

Manager/ Assistant General Manager was within the purview of U.P. Public Service Commission.

28. Some of the arguments of learned Senior Advocate raised during arguments and mentioned in written submission, are reproduced hereinafter:

"6. The officers who were appointed on the newly created posts of Assistant Regional Manager in the year 1978, have been granted pension by the Corporation. The pleadings in that respect made in paragraph 20 & 61 of writ petition have not been denied in paragraph 20 & 47 of counter affidavit and the Pension Payment Orders of some such officers appointed on newly created posts of Assistant Regional Manager and filed as Annexure No. SA-2 to the supplementary affidavit dated 18.02.2020 (necessary pleadings in paragraph no. 6 of supplementary affidavit) have not been denied in paragraph no. 36 of the supplementary counter affidavit.

7. The petitioners were appointed prior to framing of the Service Regulations 1998, and hence are entitled to pension and other post retirement benefits as payable to the officers of erstwhile U.P. Government Roadways, in accordance with the Government Order dated 21.07.1972. The date of appointment, etc., of the petitioners have been mentioned in para no. 17 of the writ petition which has not been denied in para no. 17 of the counter affidavit.

8. Even the appointment order of the petitioners provided that their services shall be governed by the Service Regulations to be framed under the Road Transport Corporation Act, 1950, and till such regulations are finally brought into effect, their services shall be governed by the Service Rules of the State of U.P. as applicable to the Government Servants as per G.O. dated 21.07.1972 (kindly refer to Annexure No.1 of the writ petition.

9. The right to pension accrues on the date of commencement of recruitment /of appointment. Hence rejection of the claim for pension to the petitioners by the Corporation amounts to resiling from the condition of service/promise made while giving appointment to the petitioners, and is impermissible under law.

(i) Writ (S/S) No. 1170 of 2010, Ashutosh Joshi vs State of Uttarakhand.

(ii) Writ (S/S) No.944 of 2010, Balwant Singh & Others State of Uttarakhand. (para 9) upheld in Special Appeal NO.330 of 2013 vide judgment dated 26.06.2014.

(iii) 2012 (1) ADJ 165, Raj Kumar Pundir us State of U.P, (paras 3, 7).

(iv) 2023 (11) ADJ 524, Nrupama Malviya vs State of U.P, (paras 20, 21, 22)."

"11. In accordance with the Government Order dated 21.07.1972, the officers of the erstwhile U.P. Government Roadways working on pensionable posts (Assistant General Manager re-designated as Assistant Regional Manager) and the petitioners / officers appointed as Assistant Regional Manager between 01.06.1972 till the date of framing of Service Regulations i.e. 10.09.1998, formed one homogenous class vis-à-vis pension. The impugned orders/resolutions therefore, are discriminatory and violative of Article 14,

as it creates a distinct class out of the same homogenous class."

29. Learned Senior Advocate also challenged the resolution dated 17.01.2019 that it was arbitrary, perverse and unreasonable. Financial result of Corporation ought to have been considered on basis of whole financial year and it was profitable. Learned Senior Advocate also challenged the resolution dated 06.04.2023 that it was contrary to the purport of Government Order dated 21.07.1972, which has specifically provided that till framing of Officers' Service Regulations, the conditions of service applicable to the Government servants in erstwhile U.P. Government Roadways will continue to apply to such Officers. So far as resolution dated 18.10.2023 is concerned, learned Senior Advocate submitted that it was also incorrect and perverse.

30. Learned Senior Advocate further submitted that in all only 128 officers of Corporation are now left, who would be entitled to pension as per Government Order dated 21.07.1972 and 12.06.2009 and till March, 2019, 27 Officers out of total 128, have retired. The remaining 111 Officers would retire uptill 2032-33. As such, financial liability for payment of pension to them is not too much as contended by Respondent-Corporation.

31. Learned Senior Advocate by referring the judgment passed by Supreme Court in the case of **State of Rajasthan and others vs. Mahendra Nath Sharma, (2015)9 SCC 540** submitted that it is a settled law that pension is not a bounty and an employee cannot be deprived of pension in violation of service condition providing for the same.

32. By referring various communications between State and Corporation learned Senior Advocate has submitted that despite there were specific observations and directions of State to consider claim of petitioners for pension being appointed between Government Order dated 21.07.1972 and 03.10.1998 when Regulations, 1998 came into force but said observations were ignored by respondents.

Submission of behalf of Respondent-Corporation

33. Per contra, Sri H.N. Singh, learned Senior Advocate and Sri S.K. Mishra, learned counsel for Respondent-Corporation, has submitted that pension can be granted only on basis of relevant provisions, however, in the present case petitioners have not been able to show any Rules, Regulations or Act which could provide pension to them. Learned Senior Advocate has placed heavy reliance on **U.P. Roadways Retired Officials and Officers Association (supra)** wherein history of Corporation was considered and while considering the issue of pension so far as employees of Corporation is concerned in relation to Road Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 that pension could be granted only when there are specific provisions for the same. He has referred few paragraphs of aforesaid judgment with regard to law of pension and the same are reproduced hereinafter:

29. In order to examine the appellants' claim for pension it is necessary to dwell on the pre-requisites provided in the GO dated 28.10.1960. To be covered in the GO for receiving pension it is necessary for the appellants to plead

and establish firstly, that they were holding permanent posts in the Roadways, and they fall in the three categories of employees referred to in para (1) of the GO. It is not the case of the appellants that they were made permanent by any express order issued by the Roadways management, nor they claim to be working in any of the three posts referred to in para (1) of the GO. Since para (2) of the GO clearly provides that the rest of the permanent non-gazetted employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable and similarly, all temporary employees will also be non-pensionable, the appellants are not entitled to pension as per GO dated 28.10.1960. Secondly, the appellants are not covered under Article 350 as amended on 20.04.1997 of the Regulations to hold the pensionable posts inasmuch as despite amendment in the first part of Article 350 of the Regulations, Note 3 thereof has not suffered amendment which provides that service in non-gazetted posts in Government Technical and Industrial Institutions in Uttar Pradesh does not qualify in the case of persons appointed to such posts on or after 15.11.1938. Since the Roadways is considered to be Technical and Industrial Institution, the appellants are covered under Note 3 of Article 350, and they are not entitled for pension.

30. The High Court, under the impugned judgment, has observed that the appellants having received retiral benefits including the benefit under the Employees Provident Fund Scheme, cannot be permitted to turn round and contend that they should also be given pension. We have also considered this aspect of the matter and we approve the observations of the High Court on the principle that a party to the litigation cannot be permitted to approbate and reprobate. See National Council of Educational Research and Training vs. Shyam Babu Maheshwari & Ors., (2011)6 SCC 412 Krishna Kumar vs. Union of India, (1990)4 SCC 207 and Union of India vs. Kailas, (1998)9 SCC 721.

31. Similarly, in the matter of V.K. Ramamurthy vs. Union of India & Anr., (1996)10 SCC 73 this Court considered the claim for pension of those who opted for pension after a long gap of retirement and held in para 4 that the contributory provident fund retirees form a different class from those who had opted for pension scheme and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme. Similar is the proposition in the matter of All India Reserve Bank Retired Officers Association & Ors. Vs. Union of India & Anr., (1992) Supp(1) SCC 664."

"35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules."

"49. We have already discussed the legal effect of the GOs dated 07.06.1972 and 05.07.1972 read along with Clause (4) of Regulation 39 of the Regulations, 1981. To reiterate, only those

employees of the State Government working in the Roadways who have opted for services of the Corporation shall be entitled for pension and other retirement benefits in terms of GO dated 05.07.1972. However, other employees of the Corporation shall not be entitled to pension, but they shall be entitled to the retirement benefits mentioned in sub-Regulations (1) and (2) of Regulation 39. Thus, it is amply clear that only State Government employees absorbed in the Corporation shall be entitled to pension, "phrase that their service conditions shall not be inferior to the conditions as were available under the Government" would be applicable to the State Government employees for the purposes of according benefit of pension. The employees of Roadways who were not holding any pensionable post prior to their deputation or absorption in the Corporation, are not entitled to pension, as their service conditions in the erstwhile Roadways did not provide that they are entitled to pension. Thus, they have not been put to any inferior service conditions on their joining the services in the Corporation. In our considered opinion, the Division Bench of the High Court was not correct in holding that the members of the RKSP are entitled to pension even if they have been promoted after the cutoff date of 27.08.1982."

34. Learned Senior Advocate for Respondent-Corporation has vehemently referred the provisions of Regulations, 1998 that it was made in supersession of all existing regulations and orders on the subject. The said declaration is reproduced hereinafter:-

"In exercise of the powers conferred by clause (c) of sub-section (2) of Section 45 of The Road Transport Corporation Act, 1950 (Act No. 64 of 1950) and in supersession of all existing regulations and orders, on the subject, the Uttar Pradesh State Road Transport Corporation with the previous sanction of the State Government makes the following regulations regulating the conditions of the service of the offers appointed to the Uttar Pradesh State Road Transport Corporation Officers Service."

35. Learned Senior Advocate also referred the contents of Regulation 2 (Application); Regulation 17 (Superannuation / Retirement Benefits); and, Regulation 25 (Effect of Enforcement of these regulations), which are already referred in earlier paragraph of this judgment. By referring contents of Regulation 2, learned counsels submitted that Regulations, 1998 shall apply to the Officers, who stood absorbed or have opted for service under the Corporation and to the Officers appointed by the Corporation on or after first day of June, 1972 whether, in a substantive capacity; or in an officiating capacity against a regular vacancy; or on ad hoc basis; or in any other capacity whatsoever.

36. Learned Senior Advocate further submitted that petitioners have claimed that they were appointed against substantive capacity after 1st June, 1972, therefore, these Regulations shall be applicable in entirety to petitioners also irrespective of earlier orders on the subject, i.e., Government Order dated 21.07.1972 since these regulations were made in supersession of all existing regulations and orders, therefore, services of petitioners would govern after 03.10.1998 when Regulations, 1998 came into force as per its provision. He submitted that Regulation 17

is on superannuation / retirement benefits and the Board has not taken any decision that petitioners were entitled for pension.

37. Sri S.K. Mishra, learned counsel added that after Regulations, 1998 came into force except of the posts specifically declared pensionable, no other posts have option of pension. Learned Senior Advocate has also vehemently referred the effect of enforcement of these regulations and by referring Regulation 25 submitted that petitioners must have given undertaking within a month on the date of commencement that provisions of Regulations, 1998 are accepted to them as well as that no provision of Regulations, 1998 is under challenge.

38. Learned counsel has referred the history behind creation of 135 posts against which petitioners were appointed that it were newly created posts and only on basis of nomenclature petitioners could not equate the said posts with earlier posts which are pensionable. By referring the communications made by State he submitted that contents of said letters show that there was no direction that petitioners are entitled for pension and they have left to the Board to consider their claim for pension. Any reference in said letters was not binding upon the Board of Corporation. Even in earlier round of litigation liberty was granted to the Board and the State to consider the claim of petitioners, therefore, no benefit be granted to petitioners of said letters.

39. Learned counsel also referred the appointment letters of petitioners that they were initially appointed on temporary posts of Corporation and they never challenged any service conditions or approached this Court or respondents soon after Regulations, 1998 came into force.

40. Learned counsel by repeatedly referring the contents of Government Order dated 21.07.1972 submitted that it was only with regard to "selection process" and not "service conditions" such as pension.

Rejoinder Submission on behalf of Petitioners

41. In rejoinder, learned Senior Advocate appearing for petitioners has submitted that reliance on **U.P. Roadways Retired Officials and Officers Association (supra)** is completely misplaced and untenable as the ratio of aforesaid judgment is not applicable to the facts of present case. Before Supreme Court neither the question of effect of Government Order dated 21.07.1972 nor Regulations, 1998 were raised or considered. Said judgment was limited to the claim of pension of employees of Group 'C' and 'D' of Corporation and Government Orders issued in that regard. Learned Senior Advocate has referred the judgments passed by Single Bench and Division Bench of this Court which led to Supreme Court.

42. With regard to argument on delay, learned Senior Advocate for petitioners has referred para 17 of writ petition, that it was not denied in para 18 of counter affidavit. For reference para 17 of writ petition and para 18 of counter affidavit are reproduced hereinafter:

"17. That similar appointment orders had been issued in favour of all other petitioners. The details of the appointment and other service details of all

the petitioners are mentioned in the chart given below :-

Sl. No.	*Name*	*Date of Appointments as ARM*	*Date of Promotion & Post*	*Date of Retirement*
1.	*Sandeep Raizada*	*01.07.1990*	*RM:02.11.12*	*21.09.2017 (Vol. Retired)*
2.	*Aqeel Akhtar Farooqi*	*19.12.1998*	*RM:02.11.12*	*30.04.2016*
3.	*Flavian Remy Francis*	*19.12.1986*		*28.02.2018*
4.	*Anil Kumar*	*16.01.1987*		*31.05.2018*
5.	*Lalit Rajvanshi*	*31.01.1987*		*30.06.2018*
6.	*Ramesh Chander Sukhija*	*19.06.1987*		*31.12.2017*
7.	*Karri Satyanarayana Murty*	*27.09.1986*		*31.08.2018*
8.	*Chandra Prakash Tiwari*	*10.10.1986*		*31.10.2014*
9.	*Ajay Kumar Srivastava*	*21.08.1988*	*SM:14.09.10*	*30.08.2013 (Vol. Retired)*
10.	*Junaid Ahmad Ansari*	*29.04.1988*		*31.05.2018*
11.	*Alok Kumar Saxena*	*26.09.1986*	*RM:26.02.05 GM:19.06.14*	*30.09.2018*
12.	*Asit Kumar Banerjea*	*29.07.1990*		*30.11.2018*
13.	*Harmeet Singh Gaba*	*25.09.1986*	*RM:10.06.04GM:19.06.14*	*31.01.2019*
14.	*Sanjiv Chandra Sinha*	*19.12.1986*		*30.06.2019*
15.	*Harish Chandra*	*26.09.1986*		*31.12.2019*
16.	*Saad Saeed*	*25.09.1986*	*RM:14.12.04GM:19.06.14*	*31.12.2019*
17.	*Rajesh Verma*	*24.10.1986*	*RM:06.08.04GM:19.06.14*	*31.05.2020*
18.	*Atul Bharti*	*25.09.1986*	*RM:04.02.06GM:19.06.14*	*31.07.2020*
19.	*Pranay Ranjan Belwariar*	*30.12.1986*	*RM:14.08.07GM:16.06.16*	*31.12.2020*
2	*Jaidee*	*10.10.*	*SM:14.08.07*	*31.0*

0.	*p Verma*	*1986*	*GM:26.09.15*	*8.2021*
21.	*Manoj Ranjan*	*10.10.1986*	*SM:14.12.06 GM:25.05.12*	*31.10.2021*
22.	*Ataur Rahman*	*10.10.1986*	*SM:14.08.07 GM:18.04.18*	*30.04.2022*
23.	*Vivek Mathur*	*10.10.1986*	*SM:14.08.07 GM:09.06.16*	*31.01.2023*
24.	*Sanjay Shukla*	*10.10.1986*	*SM:14.08.07 GM:18.04.18*	*31.01.2023*
25.	*Vidyanshoo Krishan*	*25.09.1986*		*28.02.2023*
26.	*Shachindra Pratap Singh*	*01.07.1990*	*SM:18.06.12*	*31.12.2023*
27.	*Sanjeev Kant*	*01.07.1990*		*30.11.2026*

ARM = Assistant Regional Manager, RM= Regional Manager,

SM-Service Manager, GM = General Manager."

"18. That in reply to paragraph no. 17 of the Writ Petition, it is stated that the petitioners were appointed in year 1986 or thereafter i.e. subsequent to incorporation of the respondent corporation on the posts created for the first time in the respondent corporation, and the all appointments were subject to statutory rule to be framed in exercise of power conferred U/s of the Road Transport Corporation Act-1950."

43. Following are some submissions mentioned in additional written submissions by learned counsel for respondents:

"i. The posts in the U.P. Government Roadways stood transferred to the U.P. State Road Transport Corporation on creation of the Corporation w.e.f. 01.06.1972 (and the employees on such posts were treated to be on deputation to the Corporation). Hence, there was no question of creation of posts in the Government Roadways after 01.06.1972, which ceased to exist.

ii. Neither the claim of petitioners for pension has been rejected on this ground, nor is there any such pleading/proof in the counter affidavit / supplementary counter affidavit filed by the Corporation.

iii. The U.P. Government Roadways (Abolition of Posts and Absorption of Employees) Rules, 1982 (Annexure No. 4 to the writ petition), were only applicable to the "employees" (defined under Rule 2 (ii)) of the U.P. Government Roadways who were on deputation with the Corporation. While the appointment orders on the post of Assistant Regional Manager issued in the year 1978 (filed as Annexure No.3 to the writ petition) were issued by the respondent Corporation on the newly created posts, and those appointees were neither appointed in the U.P. Government Roadways, nor were on deputation with the Corporation."

44. He also submitted that argument of learned counsel for respondents that Government Order dated 21.07.1972 only relates to the selection process and not pension, is incorrect since this reason has

not been assigned while rejecting the petitioners claim for pension in impugned resolutions as well as aforesaid Government Order specifically refers to "service conditions" which include pension.

45. I have heard learned Advocates for parties, perused the documents and pleadings available on record.

Discussion and Conclusion

46. On basis of above referred pleadings and rival submissions, the issue before this Court for consideration is:

"Whether the petitioners, who were appointed on the post of Assistant Regional Manager between 1986 and 1990 on newly created posts, are entitled for Pension on basis of a Government Order dated 21.07.1972 issued under Section 34(1) of Road Transport Corporation Act, 1950 on a subject in regard to selection procedure of posts under Road Transport Corporation as well as communications made by State Government to UPSRTC irrespective of provisions of the Uttar Pradesh State Road Transport Corporation Officers Service (General) Regulations, 1998 made in supersession of all exiting regulations and orders on the subject by the UPSRTC with the previous sanction of the State Government in exercise of the powers conferred by Clause (c) of sub section (2) of Section 45 of the Road Transport Corporation Act 1950?"

47. First of all the Court takes note of brief history mention in earlier part of this judgment. The Road Transport Corporation in State of U.P. was constituted w.e.f. 01.06.1972 and thereafter by a Government Order dated 05.07.1972 services of all Officers as well as Employees working in U.P. Roadways were merged with State Road Transport Corporation and their services were considered in Corporation on deputation and it was left open that whenever the Corporation would make rules regarding service conditions of said officers and employees, their service conditions under Corporation would not be contemptuous than those conditions which were available to them under U.P. State Roadways and their service period, seniority under Corporation, promotion, fixation of pay, right concerning leave and financial benefit, would be considered in the way only as they would have remained in Government service. The word 'pension' was missing in said Government Order.

48. Subsequently by way of another Government Order dated 21.07.1972 directions were issued by State Government under Section 34(1) of Act, 1950. Said Government Order was on the subject, "राज्य सड़क परिवहन निगम में पदों के चयन सम्बन्धी प्रक्रिया". By way of said Government order, it was directed that those posts which were within the purview of U.P. Public Service Commission and till U.P. Road Transport Corporation framed its rule, the service conditions of said posts, so far as appointment etc., shall remain same, i.e., as existed in U.P. Government Roadways.

49. The words "अन्य सेवा शर्त", i.e., "other service conditions" would include 'pension' or not is an issue for determination before this Court.

50. At this stage, it would be relevant to refer the judgment passed by Supreme Court in **U.P. Roadways Retired Officials and Officers Association (supra)** wherein it was reiterated that pension is a right and not a bounty. However, further a caveat

was put that pension can be claimed only when it is permissible under the Rules or Schemes and per contra if there is no rule to support the claim of pension, the Writ Court cannot issue a mandamus directing an employer to provide pension to an employee, who is not covered under rules.

51. In aforesaid background the Court takes note of nature of appointment of petitioners, i.e., admittedly on basis of a recommendation of Pallavan Transport Consultancy Services, the Corporation has created 135 posts of Assistant Regional Manager without any reference that said posts were the same which exist before Corporation came into existence under different nomenclature, i.e., Assistant Chief Manager as well as it was also not referred, whether the service conditions of said post would ipso facto applicable to said newly created posts and, therefore, an ambiguity remains. Petitioners have never tried to get the ambiguity cleared, though they remained in service for many years.

52. The Court also takes note that conditions of appointment of petitioners were that their services will be under the Rules or Regulations to be framed under Act, 1950. In appointment letters there was a reference that till regulations are not framed, their services will be governed by the rules applicable to U.P. Government Employees. Even at that stage, there is no reference of 'pension' since specific service rule was not mentioned in the conditions though it is absolutely clear that if subsequently the Corporation frames rules or regulations, the services of petitioners would be governed by said rules or regulations only.

53. The Corporation at first instance framed Rules, 1981 for employees and its Rule 39 relates to "pension and other retirement benefits" for employees of Corporation that they will not be entitled to pension except who was employee of the State Government in erstwhile U.P. Government Roadways and has opted the service of Corporation since their pension was protected by Government Order dated 05.07.1972. Here it is reiterated that petitioners/ officers entered in the service of Corporation in the year 1986 onwards.

54. In aforesaid circumstances, the Court also takes note that in the year 1998 UPSRTC framed Regulations, 1998 applicable to Officers of Corporation, i.e., applicable to petitioners also. The introduction of said Regulations specifically provides that it was in supersession of all existing regulations and orders on the subject matter and it was framed in exercise of powers conferred by clause (c) of sub-section (2) of Section 45 of Act, 1950, which grant power to the Corporation to make regulations for the condition of appointment and service.

55. The declaration made in very beginning of Regulations, 1998 provides that it was in supersession of all Government Orders on subject, therefore, it was in supersession of the Government Order dated 21.07.1972 also, therefore, benefit of it, if any, to service conditions of petitioners would come to an end when Regulations, 1998 came into existence. After enforcement of Regulations, 1998 the services of petitioners would govern by its regulations only and, therefore, in case said regulations provides provision of pension to services of petitioners, it would be granted, otherwise no pension can be granted.

56. In above background, the Court also takes note that Regulation 2 of Regulations, 1998 provides that it would be

applicable to officers appointed by Corporation on and after 01st June, 1972, therefore, without any dispute and ambiguity, these regulations are applicable to the service conditions of the petitioners in its entirety. Here the Court also takes note that none of the provisions of Regulations, 1998 were challenged by petitioners either in first round or in present round of litigation.

57. Regulation 17 of Regulations, 1998 provides that the Board may decide as to type of provident fund to be established for welfare of officers. However, neither petitioners not respondents have brought on record that in pursuance of said Regulation the Board has taken a decision that petitioners who were appointed before said Regulation came into force would be entitled for pension, rather petitioners who have retired, have taken benefits of Contributory Fund Scheme, i.e., other than pension scheme. Therefore, the Court is of the opinion that any specific scheme which could provide pension to petitioners is not in existence or framed in pursuance of Regulation 17 of Regulations, 1998.

58. The Court also takes note of Regulation 25 of Regulations, 1998, i.e., effect of enforcement of said Regulations. It provides that these Regulations shall apply to all Officers of Corporation who were in service of Corporation on the date of commencement of said Regulations and those who joined said service after such commencement. Since petitioners were admittedly in service of Corporation on the date of commencement of Regulations, 1998, therefore, also these Regulations shall apply to them. Clause (2) of Regulation 25 is also very relevant that Officers who were in service of Corporation when Regulations commenced, were under duty to give an undertaking within a month from the date of commencement of Regulations, 1998 that they have read and understood the regulations and accept the same. Neither petitioners nor respondents have come up with a case that petitioners have not given such undertaking since said clause further provides that in default of such undertaking, the Appointing Authority may consider termination of their employment. Therefore, petitioners are bound by provisions of Regulations, 1998.

59. On basis of above discussion, the Court is of the firm opinion that there is no specific provision subsequent to commencement of Regulations, 1998 that petitioners were entitled for pension.

60. The Court also carefully perused the resolutions adopted by Board of Directors of Respondent-Corporation. Firstly the resolution adopted in 220th meeting on 25.01.2019 which is referred in para 19 of this judgment that prayer of petitioners for grant of pension was rejected on ground of financial strength of Respondent-Corporation that it was in loss. No legal provision or applicable regulations, was considered, discussed or taken note of while taking said decision.

61. Subsequently, the Board of Directors took a resolution dated 06.04.2023 wherein the nature of creation of 135 posts against whom petitioners were appointed as well as purport of Government Order dated 21.07.1972 as well as retrospective effect of Regulations, 1998 were taken note of including the conditions of appointment that appointments will be governed by any subsequent regulations framed and enforced.

62. The Board of Directors further amended said decision by a subsequent resolution dated 18.10.2023 wherein similar decision was taken that petitioners were not entitled for pension. The Court takes note that decision took by Board of Directors are not happily worded and creates some ambiguity. Though they have referred Regulation 25 read with Regulation 17 but it does not clearly stated that these regulations are of Regulations, 1998 and referred Rules, 1982, which probably have not much bearing on the claim of petitioners. However, one issue is very clear that service conditions of petitioners have to be dealt with only in terms of Regulations, 1998 which were enforced in supersession of all earlier orders. In this regard the Court takes note of amended agenda dated 27.06.2024 but here also the ambiguity remains same, except paras 6 and 7 of it, which is reproduced hereinafter:

"6. दिनांक 18.10.2023 को निदेशक मण्डल के समक्ष प्रस्तुत एजेण्डा एवं पारित संकल्प के अनुसार परिवहन निगम द्वारा दिनांक 28.04.1982 के बाद निगम द्वारा सृजित पदों के विरूद्ध नियुक्तियां प्रारम्भ की गयी एवं नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति, विनियमावली, जो निगम के द्वारा बनायी जायेगी, उसके आधीन होगी और उन्हें नियमावली मान्य होगी।

7. उपरोक्त के सम्बन्ध में स्पष्ट करना है कि निगम द्वारा अपने गठन दि० 01.06.1972 के उपरान्त ही, निगम द्वारा सृजित पदों के विरूद्ध नियुक्तियां प्रारम्भ कर दी गयी थी तथा नियुक्ति पत्र में इस शर्त का भी समावेश किया जाना प्रारम्भ कर दिया गया था कि यह नियुक्तियां निगम द्वारा रोड ट्रान्सपोर्ट कारपोरेशन एक्ट-1950 की धारा 45 के अन्तर्गत बनाये जाने वाले नियम पूर्णतया प्रत्येक पर लागू होंगे।"

63. The outcome of above discussion is that:

(A) Petitioners were appointed against newly created 135 posts of Assistant Regional Manager and their appointment letter has specific condition that their services will be governed by the regulations to be framed under Act, 1950.

(B) Petitioners' claim that benefit granted by Government Order dated 21.07.1972 that service conditions of officers appointed thereafter will always remain the same as granted to U.P. Government Employees, is not a correct proposition since not only there was a reference of above condition in appointment letter but subsequently Regulations, 1998 came into force as well as same nomenclature of post could not be a criteria to determine entitlement for pension.

(C) The introduction of Regulations, 1998 specifically provides that it was in supersession of all earlier Government Orders issued on the subject, therefore, effect, if any, of Government Order dated 21.07.1972 came to end, when Regulations, 1998 were enforced and thereafter in terms of Regulations 17 and 25 the services of petitioners would be governed only by Regulations, 1998, which were accepted by them also.

(D) Petitioners are not able to show that in terms of Regulation 17 of Regulations, 1998 the Respondent-Corporation has framed any regulation with regard to pension, whereas admittedly all petitioners are beneficiaries of Contributory Fund Scheme and after retirement they have received the due benefits also.

(E) In pursuance of orders passed by this Court, repeated decisions were taken by Board of Directors and, as referred above, they may not be happily worded but it was a consistent decision that

services of petitioners shall be governed by Regulations, 1998 once it was framed under the powers conferred by clause (c) of sub-section (2) of Section 45 of Act, 1950.

(F) The nature of communications of State Government has no statutory back up, therefore, they were not binding on the UPSRTC as well as only on ground of nomenclature of post or earlier also some similar post was created, would not negate the facts that 135 posts of Assistant Regional Manager were created in furtherance of recommendation of Pallavan Transport Consultancy Services and that petitioners' appointments were subject to any subsequent service regulations, which were framed in the year 1998, which is now hold the field so far as service conditions of employment of petitioners is concerned.

64. In aforesaid circumstances, discussions, analysis and it's outcome as well as in absence of any specific provision of service regulation to grant pension to petitioners, the relief sought cannot be granted. The issue framed in para 46 of this judgment is answered accordingly.

63. The writ petition is dismissed.

64. No order as to costs.

(2025) 9 ILRA 348
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 7782 of 2025

Nidhi Sharma ...Petitioner

Versus

State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Himanshu Agarwal, Sameer Sharma

Counsel for the Respondents:
Anadi Krishna Narayan, C.S.C., Sunil Kumar Mishra

विचारणीय मुद्दा

वित्तिय संकट में नियोक्ता द्वारा अनुकम्पा नियोजन नहीं करने की, और तत्पश्चात ऐसे संकट से उबरने के बाद एकसाथ की जाने वाली कई नियुक्तियों की वैधानिकता।

सार-टिप्पणी (हेडनोट्स)

क. सेवा कानून- अनुकम्पा नियोजन अर्हता चालक / परिचालक पद 1165 मृतक आश्रितों की नियुक्ति - शासनादेश दिनांक 11.07.2003 द्वारा अलाभप्रद स्थिति वाले निगमों में अनुकम्पा नियुक्ति की व्यवस्था समाप्त कर दिया गया था किन्तु 2008, 2016, 2018 एवं 2024 में शिथिलता प्रदान कर अनुकम्पा नियुक्ति की व्यवस्था को आरम्भ करने का आदेश दिया गया, जिसके अनुक्रम में शासनादेश दिनांक 01.05.2025 एवं 05.05.2025 जारी की गई वैधानिकता को चुनाती बड़ी संख्या में एकसाथ अनुकम्पा नियोजन की अनुमन्यता :

अभिनिर्धारित : किसी भी नियोक्ता को ऐसी वित्तिय संकट में नियोजन के लिए बाध्य करना न केवल निगम के लिए अनुचित होगा, वरन् नियुक्त होने वाले कर्मचारी के लिए भी अनुचित रहेगा, क्योंकि उस पर भी इस संकट का प्रतिकूल प्रभाव होगा। वित्तिय दशा सुधारने पर ऐसे निगम को समय-समय पर अनुकम्पा नियोजन की अनुमति देने के लिए, उक्त शासनादेश में शिथिलता प्रदान तो की परन्तु 'नियम, 1974" के प्रावधानों में कोई भी शिथिलता प्रदान करने का आदेश नहीं दिया, वरन् उसके प्रावधानों का कठोरता से अनुपालन करने का आदेश भी दिया। इस कारण से भी शासनादेश दिनांक 01.05.2025 व 05.05.2025 विधिक शासनादेश है और उनको अभिखण्डित करने का कोई वैधानिक कारण नहीं है। (पैरा 15)

पुनः अभिनिर्धारित : शासन द्वारा 1165 पदों पर अनुकम्पा नियोजन की अनुमति दी गयी और यदि प्रत्येक वर्ष

सामान्य रूप से ऐसे अनुकम्पा नियोजन होते रहते तो हर वर्ष पूरे उत्तर प्रदेश में औसतन 100-150 अनुकम्पा नियोजन के प्रकरणों पर ही विचार किया जाता परन्तु ऐसा नहीं हुआ और इतने वर्षों तक अनुकम्पा नियोजन न करने के पीछे कोई अनुचित आधार या पूर्वाग्रहयुक्त कारण प्रदर्शित करने में याचिकाकर्ता असफल रहे हैं। अतः इतनी बड़ी संख्या में नियोजन की प्रक्रिया, जब तक नियूम, 1974 के प्रावधानों के अनुरूप हैं, उपरोक्त तथ्यों के दृष्टिगत न्यायसंगत मानी जा सकती है। (पैरा 17)

आवश्यक दिशानिर्देश : उ. प्र. राज्य सड़क परिवहन निगम को यह निर्देशित किया जाता है कि अगर चालक व परिचालक के पद की मौलिक रिक्तियां हैं, तो सीधी भर्ती की प्रक्रिया को आरम्भ करने की दिशा में उचित कदम लें और यह भी प्रयास करें कि अनुकम्पा नियोजन भी वर्षानुवर्ष नियमानुसार हो सके, जिससे एक साथ अधिक संख्या में अनुकम्पा नियोजन के द्वारा पद भरने की आवश्यकता न हो। इसके लिए प्रदेश सरकार को निर्देश दिया जाता है कि शासनादेश दिनांक 11.07.2003 में उ. प्र. रा. स. प. नि. के संदर्भ में स्थायी शिथिलता प्रदान करने के लिए भी विचार करें और इस सम्बन्ध में उचित निर्णय शीघ्र लें। (पैरा 19)

उद्धृत निर्णयविधि (केस लॉ)

विजय शर्मा एवं अन्य बनाम् उत्तर प्रदेश सरकार एवं अन्य, 2005 (15) एस. सी. टी. 261; नेशनल इंस्टीट्यूट ऑफ टेक्नालॉजी एवं अन्य बनाम् नीरज कुमार सिंह, (2007) 2 एस. सी. सी. 481: शिव कुमार दुबे एवं अन्य बनाम् उत्तर प्रदेश सरकार एवं अन्य, (2014) 2 ए. डी. जे. 312 (एफ. बी.); नसीम बानो (श्रीमती) बनाम् उत्तर प्रदेश सरकार एवं अन्य, 1993 सप. (4) एस. सी. सी. 46; लोम्बार्डी इंजीनियरिंग लिमिटेड बनाम् उत्तराखंड जल विद्युत निगम लिमिटेड, (2024) 4 एस. सी. सी. 341; उत्तर प्रदेश स्टेट रोड कार्पोरेशन एवं अन्य बनाम् मो० इस्माइल एवं अन्य, (1991) 3 एस. सी. सी. 239; स्पेशल अपील डिफेक्टिव नं0 942/2018, उत्तर प्रदेश सरकार एवं अन्य बनाम् अंतरिक्ष सिंह निर्णय दिनांक 14.05.2019; स्टेट ऑफ वेस्ट बंगाल बनाम् देबवृता तिवारी एवं अन्य, 2023 आई. एन. एस. सी. 202; कैनरा बैंक बनाम् अजीथकुमार जी. के., 2025 आई. एन. एस. सी. 184; जागेश्वर सिंह एवं अन्य बनाम् उत्तर प्रदेश सरकार एवं अन्य, 2016 ए. एच. सी. 105105; स्पेशल अपील नं0 175/2016, सुधीर कुमार मिश्रा बनाम् उत्तर प्रदेश सरकार एवं अन्य, निर्णय दिनांक 19.08.2016; टिंकू बनाम् हरियाणा सरकार, 2045 आई. एन. एस. सी. 867; अवतार सिंह बनाम् भारत सरकार, (2016) 8 एस. सी. सी. 2016 - **संदर्भित** ।

अन्तर्निहित कानून

उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती नियम, 1974

मूल-शब्द (कीवर्ड) की सूची

मृतक आश्रित नियोजन; अंतरिम आदेशः अनुकम्पा नियुक्ति; अनुस्मारक पत्र; प्रार्थना पत्र; नियमित चयनः मृतक का परिवारः वित्तीय संकटः चयन प्रक्रियाः याचिकाकर्ता; जनहित याचिकाः व्यक्तिगत लाभः शत प्रतिशत आरक्षण; सेवाकाल में मृत्युः बिलम्बः अनुकम्पा सेवायोजनः वैधानिक बाधाः वैधानिक आधारः शिथिलताः सरप्लास कर्मचारीः क्षेत्रानुसार सूची: वैधानिक दूषिताः तथ्यात्मक अवैधानिकता; आर्थिक तंगीः अभावग्रस्त परिवारः वयस्कताः आत्मघातीः आक्षेपित शासनादेशः बिलम्बित अनुस्मारक पत्रः शैक्षणिक योग्यताः वित्तिय संकट; लाभप्रद स्थितिः प्रतिकूल प्रभावः वित्तिय दशाः न्यायसंगतः मौलिक रिक्ति; वांछित राहत; श्रमिकः विधिक उपचार; आरोपी।

मामले का उद्भव

याचिकाकर्ता को अनुकम्पा नियुक्ति हेतु अनर्ह घोषित करने एवं प्रकाशित सूची में सम्मिलित न किए जाने के, और शासनादेश दिनांक 19.04.2025 के विरूद्ध ।

पक्षकारों की ओर से उपस्थिति

याचिकाकर्ता के अधिवक्ता: समीर शर्मा, वरिष्ठ अधिवक्ता, हिमांशु अग्रवाल, मो० शरवर खान, आर. यू. अंसारी, कुलदीप ।

विपक्षीगण के अधिवक्ताः अनादि कृष्णा नारायण, सुनील कुमार मिश्रा, राहुल अग्रवाल, धर्मेन्द्र धर दुबे, मृत्युंजय मोहन सहाय।

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

१. सभी याचिकाकर्ता के पिता/माता उत्तर प्रदेश राज्य सड़क परिवहन निगम (संक्षेप में उ.प्र.रा.स.प.नि.) के कर्मचारी थे, जिनकी मत्यु उनके सेवाकाल में हुई। इन सबने 'उत्तर प्रदेश सेवाकाल में मृत

सरकारी सेवकों के आश्रितों की भर्ती 'नियम, १९७४' (संक्षेप में 'नियम, १९७४') के प्रावधानों के अंतर्गत उ.प्र.रा.स.प.नि. में उपयुक्त नियोजन की मांग की, परन्तु कथित रूप से उनके क्रमशः दावे 'नियम, १९७४' के प्रावधानों के अंतर्गत अर्ह न होने के कारण या तो लिखित रूप से अस्वीकार कर दिये गये या उनके नाम उ.प्र.रा.स.प.नि. द्वारा क्षेत्रानुसार प्रकाशित अभ्यार्थियों की सूची में सम्मिलित नहीं किये गये। इस कारण उन्होंने इस न्यायालय में व्यक्तिगत याचिकायें दायर की है; कि उनके नाम भी सूची में सम्मिलित किये जाये।

२. उपरोक्त प्रार्थना के अतिरिक्त सभी याचिकागणों ने शासनादेश संख्या ४१०/तीस-२-२०२५ दिनांक २९ अप्रैल, २०२५ को निरस्त करने की प्रार्थना, संशोधन आवेदन द्वारा की है, जिसके द्वारा उत्तर प्रदेश के प्रमुख सचिव ने प्रबन्ध निदेशक, उ.प्र.रा.स.प.नि. को पूर्व में जारी शासनादेश दिनांक २२.०७.२००३ के द्वारा मृतक आश्रितों के सेवा योजन पर लगे प्रतिबंध को अपवाद स्वरूप शिथिल करते हुए उ.प्र.रा.स.प.नि. में चालकों/परिचालकों के उत्पादक पदों पर अर्ह ११६५ मृतक आश्रितों की नियुक्ति किये जाने का निर्णय लिया है।

३. यहां यह उल्लिखित करना आवश्यक है, कि पूर्व में वर्ष २००२, २०१६ व २०१८ में भी ऐसे ही शिथिलता प्रदान करते हुए क्रमशः ६५०, १२०० व ५८७ चालकों/परिचालकों की पदों पर मृतक आश्रितों की नियुक्ति करी थी व इसके उपरान्त छः वर्षों तक मृतक आश्रितों को चालक/परिचालक पदों पर नियुक्त करने की कोई भी कार्यवाही नहीं हुई है और अब २६.०२.२०१८ से ३१.१२.२०२४ तक 'नियम, १९७४' के अन्तर्गत अर्ह आवेदकों की सूची प्रकाशित करी है। शासनादेश ०१ मई, २०२५ व ५ मई, २०२५ के द्वारा अर्ह आवेदकों के आवेदन को कुछ शर्तों के साथ पूर्ण होने पर अग्रिम कार्यवाही के निर्देश दिये हैं। सभी याचीकर्ताओं ने उपरोक्त दोनों शासनादेशों को निरस्त करने की प्रार्थना याचिका में प्रारम्भ में ही कर दी थी।

४. इस न्यायालय के एक अंतरिम आदेश दिनांक ३०.०५.२०२५ के द्वारा शासनादेश ०१.०५.२०२५, ०५.०५.२०२५ व २९.०४.२०२५ व ११६५ पदों की अग्रिम कार्यवाही पर रोक लगा दी थी और याचिकाकर्ता की प्रार्थना कि, सूची में से कुछ अभ्यार्थियों को वर्तमान याचिका में भी प्रतिवादी बनाने की अनुमति दी जाये, भी स्वीकार कर ली थी। परन्तु न ही उनको कोई नोटिस निर्गत करने का आदेश दिया गया और न ही ऐसी कोई प्रार्थना याचिकाकर्ता द्वारा की गयी।

५. प्रतिवादी उ.प्र.रा.स.प.नि. ने एक प्रतिशपथ पत्र दाखिल किया व याचिकाकर्ता ने उसका प्रत्युत्तर शपथपत्र दाखिल भी किया, जिसके उपरान्त दोनों पक्षों के विद्वान अधिवक्तागणों को श्रवण करके निर्णय सुरक्षित किया गया।

६. याचिकाकर्ताओं की तरफ से उनके विद्वान वरिष्ठ अधिवक्ता श्री समीर शर्मा ने अपने सहयोगी श्री हिमांशु अग्रवाल व सर्वश्री मो० शरवर खान, आर.यू. अंसारी व कुलदीप कुमार गुप्ता ने निम्न तर्क इस न्यायालय के समक्ष रखे:

(क) रिट ए संख्या-७७८२/२०२५ में प्रार्थी के पिता की मृत्यु उनके सेवाकाल में १३.०८.२००६ को हुई थी। उसकी माता का प्रार्थना पत्र अनुकम्पा नियुक्ति के लिए लम्बे समय तक विचाराधीन रहा, परन्तु कोई निर्णय नहीं लिया गया। वर्ष २०११ में याचिकाकर्ता की माता ने उसकी अनुकम्पा नियुक्ति के लिए एक प्रार्थना पत्र दाखिल किया जो आदेश दिनांक १५.११.२०११ द्वारा अस्वीकार किया गया, कि वो अवयस्क (१८ वर्ष से छोटी) थी। याचिकाकर्ता ने वयस्क होने के उपरान्त एक प्रार्थना पत्र २१.११.२०१२ को दाखिल किया और अनुस्मारक पत्र २७.०४.२०१६ व २२.०७.२०१६ को दाखिल किये, परन्तु उस पर कोई निर्णय नहीं लिया गया। प्रार्थी ने लगातार प्रयास किया और अंततः उसका प्रार्थना पत्र इस आधार पर अस्वीकार किया गया कि वो प्रार्थना पत्र उसने उसके पिता की मृत्यु के ५ वर्षों के बाद दिया, वो भी उसके परिवार के वित्तीय संकट पर बिना ध्यान दिये।

(ख) ११६५ पदों पर केवल मृतक आश्रितों का नियोजन करना एक तरह से उनको १०० प्रतिशत आरक्षण देना है, जो भारत के संविधान के अनुच्छेद १४ व १६ के विरूद्ध है, क्योंकि इसके कारण नियमित चयन की प्रक्रिया गत कई वर्षों से नहीं हुई है। मात्र मृतक आश्रितों का ही चयन करना, उ.प्र.रा.स.प.नि. का एक मानक बन गया है और यह प्रक्रिया, चयन का वंशानुगत स्रोत बन गया है। सूची में उन अभ्यर्थियों के नाम भी शामिल किये गये हैं, जिनके प्रार्थना पत्र कर्मचारी के मृत्यु के पांच वर्ष के बाद प्रेषित किये गये हैं।

(ग) मृतक आश्रितों के द्वारा नियोजन के प्रार्थना पत्रों पर निर्णय लेने में बहुत विलम्ब होने के कारण व मृतक के परिवार के वित्तीय संकट के निर्धारण के मापदण्डों का सही अनुपालन, उ.प्र.रा.स.प.नि. द्वारा नहीं किया जा रहा है। इस कारण चयन प्रक्रिया में मनमानी हो रही है।

(घ) न्यायालय के द्वारा किये गये प्रश्न कि, अगर याचिकाकर्ताओं का नाम अर्ह अभ्यर्थियों की सूची में सम्मिलित न करने के कारण को न्यायसंगत मान लिया जाये और इस कारण से कि उनके या किसी अन्य द्वारा नियमित चयन की प्रक्रिया को आरम्भ करने की कोई मांग नहीं की गई है, तो क्या याचिकाकर्तागण के आग्रह पर सूची, प्रक्रिया व संदर्भित शासनादेश को निरस्त करना उचित होगा, जबकि इस निष्कर्ष से याचिकाकर्ताओं को कोई भी लाभ नहीं होगा और यह कि वर्तमान याचिकायें जनहित याचिकाएं भी नहीं हैं? के उत्तर में विद्वान वरिष्ठ अधिवक्ता ने कथन किया कि अगर कोई प्रक्रिया संविधान के अनुरूप नहीं है और उसका प्रभाव समाज के प्रतिकूल है तो याचिकाकर्ता इस न्यायालय के समक्ष आ सकता है और अगर वो यह प्रदर्शित करने में समर्थ हो जाता है कि प्रक्रिया संविधान के अनुच्छेद १४ व १६ व 'नियम, १९७४' के प्रावधानों के विपरीत है तो यह न्यायालय समस्त प्रक्रिया निरस्त कर सकता है, चाहे इससे याचिकाकर्ता का कोई व्यक्तिगत लाभ न भी हो और वो नियमित चयन प्रक्रिया में भाग लेना चाहता हो या नहीं; इसका कोई प्रतिकूल प्रभाव नहीं होगा।

७. याचिकाकर्ता के विद्वान अधिवक्ताओं ने निम्न विधिक दृष्टांगों पर बल प्रदान किया- **विजय शंकर शर्मा एवं अन्य बनाम उत्तर प्रदेश सरकार एवं अन्य, २००५ (१५) एस.सी.टी. २६१; नेशनल इंस्टीट्यूट ऑफ टेक्नोलॉजी एवं अन्य बनाम नीरज कुमार सिंह (२००७) २ एस.सी.सी. ४८१; शिव कुमार दुबे एवं अन्य बनाम उत्तर प्रदेश सरकार एवं अन्य (२०१४) २ ए.डी.जे. ३१२ (एफ.बी.); नसीम बानो (श्रीमती) बनाम उत्तर प्रदेश सरकार एवं अन्य १९९३ सप. (४) एस.सी.सी. ४६; लोम्बार्डी इंजीनियरिंग लिमिटेड बनाम उत्तराखण्ड जल विद्युत निगम लिमिटेड (२०२४) ४ एस.सी.सी. ३४१; उत्तर प्रदेश स्टेट रोड कार्पोरेशन एवं अन्य बनाम मो० इस्माइल एवं अन्य (१९९१) ३ एस.सी.सी. २३९; उत्तर प्रदेश सरकार एवं अन्य बनाम अंतरिक्ष सिंह (स्पेशल अपील डिफेक्टिव नं० ९४२/२०१८) आदेश दिनांक १४.०५.२०१९; स्टेट ऑफ वेस्ट बंगाल बनाम देबवृता तिवारी एवं अन्य २०२३ आई.एन.एस.सी. २०२; केनरा बैंक बनाम अजीथकुमार जी.के. २०२५ आई.एन.एस.सी. १८४; जागेश्वर सिंह एवं अन्य बनाम उत्तर प्रदेश सरकार एवं अन्य २०१६: ए.एच.सी: १०५९०५; सुधीर कुमार मिश्रा बनाम उत्तर प्रदेश सरकार एवं अन्य (स्पेशल अपील नं० १७५/२०१६) आदेश दिनांक १९.०८.२०१६,** कि किसी भी चयन प्रक्रिया में मृतक आश्रितों के लिए कोई भी पद आरक्षित नहीं किया जा सकता जबकि वर्तमान प्रक्रिया में उनका शत प्रतिशत आरक्षण है। यह कि मृतक आश्रित नियोजन, एक नियम की किसी भी नियोजन प्रक्रिया में सबको सम्मिलत होने का अधिकार है, का अपवाद है व यह नियोजन 'नियम, १९७४' या कोई योजना के प्रावधानों के अंतर्गत ही दिया जा सकता है। यह कि कोई भी शासनादेश, किसी वैधानिक नियमों का अतिक्रमण नहीं कर सकता है। चयन प्रक्रिया में ऐसे अभ्यर्थीगण जिन्होंने सरकारी सेवक की सेवाकाल में मृत्यु होने के ५ वर्ष के बाद आवेदन करने का कोई यथोचित कारण दर्शाया हो या वयस्क होने के कारण ५ वर्ष के बाद आवेदन किया हो, ऐसे, आवेदन को उनके वित्तीय संकट के मापदण्ड पर तय न करके और बिना किसी सोच-विचार के सूची में सम्मिलित न करना 'नियम, १९७४' के प्रावधानों का उल्लंघन है। यह कि ऐसे प्रार्थना पत्र जो विलम्ब से दिये गये हैं, उनके लिए मृतक आश्रित नियोजन के लिए, वित्तीय संकट या अनुचित कष्ट ही एक मात्र मानक है फिर भी प्रतिवादी ने इस पर विचार नहीं किया और न ही ५ वर्ष के उपरान्त प्रेषित आवेदनों को नियम ५ के परन्तुक के अन्तर्गत शासन को प्रेषित भी नहीं किया कि उक्त प्रावधान में शिथिलता प्रदान की जा सके।

८. उपरोक्त के प्रतिपक्ष में विद्वान अधिवक्तागण सर्वश्री सुनील कुमार मिश्रा, राहुल अग्रवाल, धर्मेन्द्र धर दुबे व मृत्युंजय मोहन सहाय ने कथन किया कि:

(क) सभी जिन याचिकाकर्ता के अनुकम्पा सेवायोजन के प्रार्थना पत्र स्वीकार नहीं किये गये उनके प्रकरण में कोई न कोई वैधानिक बाधा है और इस न्यायालय के समक्ष उस वैधानिक बाधा को दूर करने के लिए कोई ठोस आधार नहीं बताये गये हैं।

(ख) याचिकाकर्तागण एक तरफ अनुकम्पा सेवायोजन की सूची में अपना नाम सम्मिलित करवाना चाहते हैं और दूसरी तरफ अगर उनका नाम नहीं सम्मिलित हो पाये, तो सम्पूर्ण चयन प्रक्रिया को दूषित करार देना चाहते हैं। उनकी ये प्रार्थनायें आपस में आत्मघाती हैं। इस कारण से अगर उनकी प्रार्थना कि उन्हें सूची में सम्मिलित किया जाये, इस न्यायालय द्वारा अस्वीकार की जाती है तो अन्य प्रार्थना की समस्त प्रक्रिया दूषित घोषित करी जाये को यह न्यायालय सिरे से खारिज करे। प्रार्थियों के पास कोई वैधानिक आधार नहीं है कि चयन प्रक्रिया को चुनौती दें सके।

(ग) चयन प्रक्रिया, प्रदेश शासन द्वारा निर्गत शासनादेश दिनांक २९.०४.२०२५ द्वारा मृतक आश्रितों को ऐसे निगम जो लाभप्रद स्थिति में नहीं है उसमें अनुकम्पा नियोजन को समाप्त करने वाले शासनादेश दिनांक २२.०७.२००३ की विधिक

बाधा में शिथिलता प्रदान करते हुए, उ.प्र.रा.स.प.नि. को ऐसी सेवा नियोजन देने की अनुमति, जो सभी पहलुओं पर सम्यक विचारोपरान्त प्रदान की है, के अनुसार प्रारम्भ की गयी है। शासनादेश दिनांक २२.०७.२००३ में यह आदेशित किया गया था कि *"प्रदेश के ऐसे सार्वजनिक उपक्रम/निगम जो लाभप्रद की स्थिति में नहीं है अर्थात् जिनमें संचित हानि है अथवा जिनमें सरप्लस कर्मचारी हैं, उन सार्वजनिक उपक्रमों/निगमों में उनके सेवाकाल में मृत्यु हो जाने की दशा में उनके आश्रितों की सेवायोजन के लिए आने की सुविधा को समाप्त करने का निर्णय लिया गया है।"*

(घ) मुख्यालय परिवहन निगम, द्वारा क्षेत्रानुसार सूची प्रेषित की गयी (अलीगढ़ क्षेत्र की सूची दिनांक ०१.०५.२०२५ के पत्रांक द्वारा प्रेषित की गयी है) और शासनादेश दिनांक ०१.०५.२०२५ व २९.०५.२०२५ द्वारा यह भी निर्देशित किया गया कि 'नियम, १९७४' के प्रावधानों के अनुसार ही अग्रिम प्रक्रिया की जाये, अर्थात प्रत्येक अभ्यर्थी पद की योग्यता एवं आयु सम्बन्धी अर्हता पूर्ण करते हों और कर्मचारी की मृत्यु के ०५ वर्ष के अन्दर आवेदन करने वाले अभ्यर्थियों को ही नियुक्ति प्रदान की जाये। चालक के पदों के लिए मोटरयान अधिनियम, १९८८ के उचित प्रावधानों के अनुसार चालन अनुज्ञि की भी सम्यक रूप से जांच कर लिया जाये। अतः प्रयोज्य प्रावधानों में कोई भी शिथिलता प्रदान नहीं करी गयी है। अतः चयन प्रक्रिया में कोई वैधानिक दूषिता नहीं है। जिन याचिकाकर्तागण के आवेदन, यदि कर्मचारी की मृत्यु के ५ वर्षों के बाद प्रेषित किये गये हैं, इसलिए उन पर विचार करना अपेक्षित नहीं है।

(ङ) याचिका संख्या ७७८२ वर्ष २०२५ में याचिकाकर्ता (निधि शर्मा) का आवेदन उसके कर्मचारी पिता के मृत्यु के ६ वर्ष के बाद प्रेषित किया गया और क्योंकि कर्मचारी की मत्यु के ५ वर्ष के बाद आवेदन किया गया था, इसलिए उस पर विचार नहीं किया गया। 'नियम, १९७४' में आवेदक के वयस्क होने तक के समय को अनदेखा करने का कोई प्रावधान नहीं है।

(च) इस याचिका के प्रस्तर ४९ में एक अभ्यर्थी रेनू सिंह जिसका नाम सूची में है, के लिए यह कथन किया गया है, कि उसका प्रार्थना पत्र उसके पिता की मृत्यु (१०.०८.२०११) के ५ वर्ष बाद भी स्वीकार किया, परन्तु यह कथन अभिलेखों के विपरीत है, जैसा कि परिवहन निगम मुख्यालय के पत्रांक दिनांक २३, जनवरी, २०२३, जो प्रतिशपथ पत्र के साथ संलग्नक है, से स्पष्ट है कि अभ्यर्थी रेनू सिंह का पहला प्रार्थना पत्र १२.०१.२०१२ अर्थात उसके पिता की मृत्यु के ५ वर्ष के अन्दर ही प्रेषित कर दिया गया था, अतः चयन प्रक्रिया में मनमानी का आरोप आधारहीन है। याचिकाकर्ताओं ने किसी और अभ्यर्थी के संबंध में कोई तथ्यात्मक अवैधानिकता का उल्लेख नहीं किया है।

(छ) याचिकाकर्ता के विद्वान अधिवक्ता द्वारा **विजय कुमार दुबे (पूर्व में उल्लिखित)** के निर्णय का उल्लेख किया गया है परन्तु वो तथ्यों के अंतर के कारण याची के प्रकरण के लिए उपयुक्त नहीं हैं, क्योंकि **विजय कुमार दुबे (पूर्व में उल्लिखित)** के प्रकरण में उसके पिता का नियोजन श्रम न्यायालय द्वारा उनकी मृत्यु के २५ साल बाद वैध माना था। अतः उक्त समय का लाभ उसको दिया गया है और इतने वर्षों के बाद भी अनुकम्पा नियोजन प्रदान करने का आदेश दिया गया।

अनुकम्पा नियोजन की विधि

९. टिंकू बनाम हरियाणा सरकार: २०२४ आई.एन.एस.सी. ८६७:

"१२- जहाँ तक अनुकंपा नियुक्ति को, नियुक्ति के निहित अधिकार के रूप में दावा करने का विषय है, तो इतना उल्लेख करना पर्याप्त है, कि उक्त अधिकार सेवा काल में हुये मृत कर्मचारी की सेवा की शर्त नहीं है, जिसे बिना किसी जाँच या चयन प्रक्रिया के आश्रित को दिया जाना ही चाहिए। यह नियुक्ति विभिन्न मानदंडों के उचित और कठोर जाँच के बाद ही दी जाती है, जिसका उद्देश्य किसी परिवार को अचानक हुई आर्थिक तंगी से उबारना है, ताकि वह उस आपातकालीन स्थिति से उबर सके, जहाँ एकमात्र कमाने वाला व्यक्ति मर गया है और उन्हें असहाय और शायद दरिद्रता में छोड़ दिया है। इसलिए, अनुकंपा नियुक्ति, मृतक कर्मचारी के उस परिवार को संकट से उबारने के लिए प्रदान की जाती है, जो अत्यधिक आर्थिक कठिनाई का सामना कर रहा है और सेवायोजन के बिना, परिवार इस संकट का सामना करने में सक्षम नहीं होगा। यह किसी भी स्थिति में, अनुकम्पा नियुक्ति के लिए निर्धारित नीति, निर्देशों या नियमों की अपेक्षाओं को पूर्ण करने के अधीन होगी।

१३. यहां यह स्पष्ट रूप से उल्लिखित कर देना चाहिए कि ऐसे प्रकरण में जहां अनुकंपा के आधार पर नियुक्ति के लिए कोई नीति, निर्देश या नियम नहीं है, ऐसी नियुक्ति प्रदान नहीं की जा सकती।

१४. जहाँ भी अनुकंपा नियुक्ति के लिए ऐसी नीतियाँ बनाई जाती हैं, उनका मूल आधार और औचित्य, संकटग्रस्त और अभावग्रस्त परिवार को राहत प्रदान करने का उद्देश्य होता है, और इस प्रकार मृतक कर्मचारी के परिवार के पक्ष में सामान्य नियम का एक अपवाद बन जाता है। ऐसा ऐसे कर्मचारी द्वारा प्रदान की गई सेवाओं और उसके परिणामस्वरूप उत्पन्न वैध विधिक अपेक्षाओं को ध्यान में रखने के अतिरिक्त अप्रत्याशित घटनाओं अर्थात एकमात्र कमाने वाले की मृत्यु के कारण परिवार की स्थिति और घटनाक्रम में अचानक आए बदलाव को भी ध्यान में रखा जाता है।

१५. अतः, ऐसी नीतियों का उद्देश्य परिवार की परेशानियों में तत्काल सहायता प्रदान करना है। इस परिप्रेक्ष्य में, आश्रित द्वारा दावा प्रस्तुत करने के लिए कर्मचारी की मृत्यु की तिथि से तीन वर्ष की अवधि निर्धारित की गई है, जिसमें हरियाणा सरकार द्वारा जारी 1999 की नीति निर्देशों के अनुसार वयस्कता प्राप्त करना भी शामिल है, जिसे किसी भी स्थिति में अनुचित या अतार्किक नहीं कहा जा सकता, खासकर जब अनुकम्पा नियुक्ति एक निहित अधिकार नहीं है।

१६. वर्तमान मामले में, जैसा कि अभिलेखों से स्पष्ट है, अपीलकर्ता अपने पिता की दुर्भाग्यपूर्ण मृत्यु के ११ वर्ष बाद वयस्क हुआ। इस प्रकार, प्रतिवादी राज्य द्वारा दावे को उचित रूप से अस्वीकार किया गया है। इस प्रकार अपीलकर्ता के दावे को अस्वीकार करने वाले उच्च न्यायालय के आक्षेपित निर्णयों में कोई त्रुटि नहीं है।" (उपरोक्त हिन्दी अनुवाद न्यायालय द्वारा किया गया है। अतः किसी भी अनुवाद सम्बन्धी विवाद की स्थिति में मूल निर्णय को संदर्भित किया जाये।)

<u>प्रार्थनाओं का विश्लेषण</u>: -

१०. याचिकाकर्ताओं ने एक ओर अनुकम्पा नियोजन के लिये अपना-अपना दावा प्रस्तुत किया है कि उनका भी प्रकरण 'नियम, १९७४' के प्रावधानों के अनुसार विचार किया जाय अर्थात् उनके नाम भी उ.प्र.रा.स.प.नि. के द्वारा प्रकाशित अर्ह अभ्यर्थियों की सूची में सम्मिलत कर लिये जाये अथवा वो समस्त शासनादेश जिसके द्वारा नियोजन की प्रक्रिया आरम्भ हुई है, विधि विरुद्ध घोषित करके अभिखण्डित किये जायें। उपरोक्त दोनों प्रार्थनाएं एक दूसरे के विरोधी हैं या दूसरे शब्दों में आत्मघाती हैं, क्योंकि अगर न्यायालय व्यक्तिगत याचिकाकर्ता के तथ्यों के संदर्भ में यह निर्णय देता है, कि उनका प्रकरण 'नियम, १९७४' के प्रावधानों के अनुसार विचार किये जा सकते हैं तो उनको अनुकम्पा नियोजन उन्हीं शासनादेशों के कारण प्रदान किया जायेगा, जिनको वैकल्पिक प्रार्थना के द्वारा अभिखण्डित करने की माँग करी गयी है। अतः एक कथन के माध्यम से आक्षेपित शासनादेश वैधानिक और दूसरे कथन के माध्यम से वो ही शासनादेश अवैधानिक घोषित करने की बहस करके, याचिकाकर्तागण दो नावों में एक साथ नौकायन करना चाहते हैं, वो भी जो एक दूसरे से विपरीत दिशा में जा रहीं हैं।

<u>याचिकाकर्ता निधि शर्मा के प्रकरण के तथ्य व विधिक पहलुओं का विश्लेषण</u>:-

११. अविवादित रुप से उक्त याचिकाकर्ता के पिता की मृत्यु उ.प्र.रा.स.प.नि. के सेवाकाल में दिनांक १३.०८.२००६ को हुई और याचिकाकर्ता ने वयस्क होने के उपरांत व पिता की मृत्यु के छः वर्ष बाद प्रार्थना पत्र प्रेषित करा और आगामी ४ वर्ष तक कोई कार्यवाही नहीं करी और एक विलम्बित अनुस्मारक पत्र २७.०४.२०१६ को प्रेषित करा। 'नियम, १९७४' के प्रावधानों के अनुसार मृत्यु के ५ वर्ष के उपरांत दिये गये प्रार्थना पत्र पर साधारणतः विचार नहीं किया जाता है और मात्र इस कारण से कि पूर्व में एक प्रार्थना पत्र याचिकाकर्ता के अवयस्क होने के कारण १५.११.२०११ को निरस्त हो गया था, यह नहीं माना जा सकता कि आवेदन ५ वर्ष के अंदर ही दे दिया था क्योंकि 'नियम, १९७४' के नियम ५ के अनुसार आवेदक वांछित पद के लिए निर्धारित शैक्षणिक योग्यताएं पूरी करता हो, अन्यथा सरकारी सेवा के लिए योग्य हो और सरकारी कर्मचारी की मृत्यु की तारीख से पांच वर्ष के भीतर रोजगार के लिए आवेदन करता है अर्थात् अगर उपरोक्त सभी स्थितियों को संतुष्ट करता हो, तो उन्हीं परिस्थितियों में उसके आवेदन पर 'नियम, १९७४' के अन्तर्गत विचार किया जा सकता है, परन्तु याचिकाकर्ता अविवादित रुप से उक्त सभी शर्त पूर्ण नहीं करती है।

१२. 'नियम, १९७४' का नियम ५ निम्न है:-

"(१) यदि किसी सरकारी सेवक की इन नियमों के लागू होने के पश्चात सेवाकाल में मृत्यु हो जाती है और मृतक सरकारी सेवक का पति या पत्नी पहले से ही केन्द्रीय सरकार या राज्य सरकार या केन्द्रीय सरकार या राज्य सरकार के स्वामित्व या नियंत्रण वाले निगम में नियोजित नहीं है, तो उसके परिवार एक सदस्य को, जो पहले से ही केन्द्रीय सरकार या राज्य सरकार या केन्द्रीय सरकार या राज्यसर के स्वामित्व या नियंत्रण वाले निगम में नियोजित नहीं है, इस प्रयोजन के लिए आवेदन करने पर, सामान्य भर्ती नियमों में छूट देते हुए, उत्तर प्रदेश लोक सेवा आयोग के क्षेत्राधिकार में आने वाले पद को छोड़कर, किसी पद पर सरकारी सेवा में उपयुक्त नियोजन दिया जाएगा, यदि ऐसा व्यक्ति-

(i) पद के लिए निर्धारित शैक्षणिक योग्यताएं पूरी करता हो,

(ii) अन्यथा सरकारी सेवा के लिए योग्य है, और

(iii) सरकारी कर्मचारी की मृत्यु की तारीख से पांच वर्ष के भीतर रोजगार के लिए आवेदन करता है:

परन्तु जहां राज्य सरकार को यह समाधान हो जाता है कि रोजगार के लिए आवेदन करने के लिए नियत समय-सीमा किसी विशिष्ट मामले में अनुचित कठिनाई उत्पन्न करती है, वहाँ वह मामले को न्यायसंगत और साम्यपूर्ण ढंग से निपटाने के लिए, जैसा वह आवश्यक समझे, आवश्यकता को समाप्त कर सकती है या उसमें ढील दे सकती है।

(२) जहां तक संभव हो, ऐसा रोजगार उसी विभाग में दिया जाना चाहिए जिसमें मृतक सरकारी कर्मचारी अपनी मृत्यु से पहले कार्यरत था।"

१३. उपरोक्त के पृष्ठभूमि में वरिष्ठ अधिवक्ता का यह कथन की प्रकरण की परिस्थितियों में ५ वर्ष की सीमा में शिलिलता देने के लिए उ.प्र.रा.स.प.नि. को याचिकाकर्ता का प्रकरण स्वत: राज्य सरकार को भेज देना चाहिए था। इस अन्तराल के बाद, जब याचिकाकर्ता ने पूर्व में स्वयं कोई कार्यवाही नहीं करी, स्वीकार नहीं किया जा सकता व उपरोक्त 'परन्तुक' नियोक्ता को बाध्य नहीं करता की वो इस तरह के प्रकरण को स्वतः राज्य सरकार को भेज दें। अतः वर्तमान याचिकाकर्ता का नाम अनुकम्पा नियोजन के अर्ह अभ्यर्थियों की सूची में सम्मिलित करने का कोई विधिक औचित्य नहीं है।

<u>आक्षेपित शासनादेश व अनुकम्पा नियोजन की प्रक्रिया की विधिक वैधता का विश्लेषण</u>: –

१४. शासनादेश दिनांक ११ जुलाई, २००३ द्वारा प्रदेश सरकार ने ऐसे उपक्रम जो लाभप्रद की स्थिति में नहीं थे उनमें अनुकम्पा नियोजन की प्रक्रिया को समाप्त करने का निर्णय लिया था और अविवादित रूप से उ.प्र.रा.स.प.नि. उस समय लाभप्रद स्थिति में नहीं था। कुछ वर्ष उपरान्त सम्भवतः वित्तीय स्थिति में सुधार होने के कारण, प्रदेश सरकार द्वारा वर्ष २००८, २०१६, २०१८ व अब ६ वर्ष बाद २०२४ में एक बार फिर से उक्त शासनादेश में शिथिलता प्रदान करते हुए अनुकम्पा नियोजन की प्रक्रिया को आरम्भ करने का आदेश दिया, जिसके अनुक्रम में उ.प्र.रा.स.प.नि. ने अन्य शासनादेश दिनांक ०१.०५.२०२५ व ०५.०५.२०२५ मुख्यालय स्तर व उसके उपरान्त क्षेत्रीय स्तर पर अर्ह अभ्यर्थियों के नाम की सूची के साथ जारी, इस निर्देश के साथ किये कि 'नियम, १९७४' के प्रावधानों का कठोरता से पालन करने के उपरान्त ही नियोजन का आदेश पारित करें। परन्तु इस न्यायालय के अंतरिम आदेश के कारण प्रक्रिया अभी पूर्ण नहीं हो पायी है।

१५. शासनादेश दिनांक ११.०७.२००३ द्वारा ऐसे निगम जो लाभप्रद स्थिति नहीं थे, अनुकम्पा नियोजन की प्रक्रिया को समाप्त कर दिया था। किसी भी नियोक्ता को ऐसी वित्तीय संकट में नियोजन के लिए बाध्य करना न केवल निगम के लिए अनुचित होगा वरन् नियुक्त होने वाले कर्मचारी के लिए भी अनुचित रहेगा, क्योंकि उस पर भी इस संकट का प्रतिकूल प्रभाव होगा। वित्तीय दशा सुधारने पर ऐसे निगम को समय-समय पर अनुकम्पा नियोजन की अनुमति देने के लिए, उक्त शासनादेश में शिथिलता प्रदान तो की परन्तु 'नियम, १९७४' के प्रावधानों में कोई भी शिथिलता प्रदान करने का आदेश नहीं दिया वरन् उसके प्रावधानों का कठोरता से अनुपालन करने का आदेश भी दिया। इस कारण से भी शासनादेश दिनांक ०१.०५.२०२५ व ०५.०५.२०२५ विधिक शासनादेश है और उनको अभिखण्डित करने का कोई वैधानिक कारण नहीं है।

१६. अब न्यायालय यह विचार करेगा कि क्या उ.प्र.रा.स.प.नि. में अनुकम्पा नियोजन ही गत एक दशक में सेवायोजन का एकमात्र स्रोत बन गया है और क्या एक साथ बड़ी संख्या में अनुकम्पा नियोजन होने से उ.प्र.रा.स.प.नि. को चालक/परिचालक पर नियमित नियुक्तियाँ, न करके संविदा पर क्षेत्रानुसार कभी रोज़गार मेलों के द्वारा तो कभी केवल महिला भर्ती के नाते, सेवायोजन करने का कारण बन गया है और क्या इस कारण से आक्षेपित शासनादेश अवैधानिक करार दिये जा सकते हैं?

१७. जैसा कि पूर्व में उल्लेखित किया है वर्ष २००७, २०१६, २०१७ व अब ६ वर्ष बाद २०२४ में पुनः शासनादेश दिनांक ११.०७.२००३ में शिथिलता प्रदान करते हुए अनुकम्पा नियोजन की प्रक्रिया फिर से आरम्भ करने का आदेश दिया और ऐसे अभ्यर्थियों की सूची बनाई जो अर्ह हैं और जिनके आवेदन कर्मचारी के मृत्यु के ५ वर्ष के अंदर प्रेषित किये गए थे। २०१७ से २०२४ तक कोई अनुकम्मा नियोजन नहीं हुआ, इस कारण से क्षेत्रीय स्तर पर ऐसे आवेदन की संख्या अधिक हो गयी और वो प्रकरण भी सूची में शामिल हुए, जिनमें कर्मचारी की मृत्यु २०१७ से ५ वर्ष पूर्व अर्थात २०१३ में हुई जिससे वास्तव में १०-११ वर्ष पुराने प्रकरण से संबंधित अभ्यर्थियों के नाम भी सम्मिलित किये गये। शासन द्वारा

११६५ पदों पर अनुकम्पा नियोजन की अनुमति दी और यदि प्रत्येक वर्ष सामान्य रूप से ऐसे अनुकम्पा नियोजन होते रहते तो हर वर्ष पूरे उत्तर प्रदेश में औसतन १००-१५० अनुकम्पा नियोजन के प्रकरणों पर ही विचार किया जाता परन्तु ऐसा नहीं हुआ और इतने वर्षों तक अनुकम्पा नियोजन न करने के पीछे कोई अनुचित आधार या पूर्वाग्रहयुक्त कारण प्रदर्शित करने में याचिकाकर्ता असफल रहे हैं। अतः इतनी बड़ी संख्या में नियोजन की प्रक्रिया, जब तक 'नियम, १९७४' के प्रावधानों के अनुरूप हैं, उपरोक्त तथ्यों के दृष्टिगत न्याय संगत मानी जा सकती है।

१८. याचिकाकर्ता यह प्रदर्शित करने में असफल रहे कि प्रक्रिया में मनमानी हुई है और सीधी भर्ती न होने के कारण उनका कोई विधिक अधिकार का हनन हुआ है और न ही यह याचिका एक जनहित याचिका ही है। अतः वर्तमान अनुकम्पा नियोजन की प्रक्रिया को याचिकाकर्ता की प्रार्थना पर खंडित नहीं किया जा सकता है। अतः इस कारण से भी उपरोक्त शासनादेश विधिक रूप से न्याय संगत है।

१९. उपरोक्त विश्लेषण के उपरान्त भी, यह तथ्य की कई वर्षों से उ.प्र.रा.स.प.नि. में चालक व परिचालक की सीधी भर्ती की प्रक्रिया नहीं हुई और नियोजन या तो संविदा के माध्यम से या कई वर्षों के बाद अनुकम्पा नियोजन की प्रक्रिया से हुआ है और अब भी हो रहा है का यह न्यायालय गंभीरता से संज्ञान लेता है। जैसा कि सूचित किया गया है कि वर्ष २००५ में चालक के पदों पर अंतिम सीधी भर्ती क्षेत्रीय स्तर पर हुई थी एवं वर्ष २०१६ में उत्तर प्रदेश अधीनस्थ सेवा चयन आयोग द्वारा परिचालक के १६९० पदों पर अंतिम सीधी भर्ती हुई थी और उसके उपरांत कोई भी सीधी भर्ती की प्रक्रिया ना तो चालक और ना ही परिचालक के पदों पर हुई है। इस कारण से उ.प्र.रा.स.प.नि. को यह निर्देशित किया जाता है कि अगर चालक व परिचालक के पद की मौलिक रिक्तियाँ हैं तो सीधी भर्ती की प्रक्रिया को आरम्भ करने की दिशा में उचित कदम लें और यह भी प्रयास करें कि अनुकम्पा नियोजन भी वर्षानुवर्ष नियमानुसार हो सके, जिससे एक साथ अधिक संख्या में अनुकम्पा नियोजन के द्वारा पद भरने की आवश्यकता न हो। इसके लिए प्रदेश सरकार को निर्देश दिया जाता है कि शासनादेश दिनांक ११.०७.२००३ में उ.प्र.रा.स.प.नि. के संदर्भ में स्थायी शिथिलता प्रदान करने के लिए भी विचार करें और इस सम्बन्ध में उचित निर्णय शीघ्र लें।

याचिकानुसार निष्कर्ष

२०. याचिका संख्या ७७८२ वर्ष २०२५: उपरोक्त विश्लेषण के परिप्रेक्ष्य में याचिका की समस्त प्रार्थनाएं अस्वीकार की जाती हैं। अंतरिम आदेश दिनांक ३०.०५.२०२५ निरस्त किया जाता है। याचिका का उपरोक्त निर्देशों के साथ निस्तारण किया जाता है।

२१. याचिका संख्या ११५४८ वर्ष २०२५: वर्तमान प्रकरण में आक्षेपित आदेश दिनांक २१.०६.२०२५ जिसके द्वारा याचीकर्ता के पक्ष में अनुकम्पा नियोजन को आदेश दिनांक ०२.०६.२०२५ और ०६.०६.२०२५ को इस न्यायालय के अंतिरम आदेश दिनांक ३०.०५.२०२५ के अनुपालन में याचिका संख्या ७७८२/२०२५ के अन्तिम निर्णय तक स्थगित कर दिया था और जैसा कि पूर्व में उल्लेखित किया गया है कि उक्त अंतरिम आदेश दिनांक ३०.०५.२०२५ निरस्त किया जा चुका है, और आक्षेपित शासनादेश वैध घोषित किये गये है। अतः याचिकाकर्ता को अब वांछित राहत प्राप्त हो गयी है। अतः याचिका का तद्नुसार निस्तारण किया जाता है।

२२. याचिका संख्या ११५४३ वर्ष २०२५: वर्तमान याचिका में आक्षेपित आदेश दिनांक १९.०६.२०२५ द्वारा याचीगण के पक्ष में अनुकम्पा नियोजन का आदेश दिनांक ३१.०५.२०२५ को इस न्यायालय के अंतिरम आदेश दिनांक ३०.०५.२०२५ के अनुपालन में याचिका संख्या ७७८२/२०२५ के अंतिम निर्णय तक स्थगित कर दिया था और जैसा कि पूर्व में उल्लेखित किया गया है कि अंतरिम आदेश दिनांक ३०.०५.२०२५ निरस्त किया जा चुका है व आक्षेपित शासनादेश वैध घोषित किये गये हैं, अतः याचिकाकर्ता को वांछित राहत प्राप्त हो गयी है। अतः याचिका का तद्नुसार निस्तारण किया जाता है।

२३. याचिका संख्या ११५५५ वर्ष २०२५: वर्तमान याचिका में आक्षेपित आदेश दिनांक २१.०६.२०२५ द्वारा याचीगण के पक्ष में अनुकम्पा नियोजन का आदेश दिनांक १४.०५.२०२५ को इस न्यायालय के अंतिरम आदेश दिनांक ३०.०५.२०२५ के अनुपालन में याचिका संख्या ७७८२/२०२५ के अन्तिम निर्णय तक स्थगित कर दिया था और जैसा कि पूर्व में उल्लेखित किया गया है कि अंतरिम आदेश दिनांक ३०.०५.२०२५ निरस्त किया जा चुका है व आक्षेपित शासनादेश वैध घोषित किये गये हैं, अतः याचिकाकर्ता को वांछित राहत प्राप्त हो गयी है। अतः याचिका का तद्नुसार निस्तारण किया जाता है।

२४. याचिका संख्या ११५९४ वर्ष २०२५: याचिकाकर्ता राजेन्द्र सिंह के पिता की मृत्यु उनके सेवाकाल में दिनांक २३.०८.१९९० को हुई थी। उसके उपरान्त उसकी माता की नियुक्ति कथित रूप से अनुकम्पा नियोजन पर श्रमिक के पद पर वर्ष १९९२ में हुई व उनकी मृत्यु उनके कार्यकाल के दौरान दिनांक १९.०३.२०१६ को हुई। इसके उपरान्त याचिकाकर्ता ने अनुकम्पा नियोजन के लिए एक आवेदन दिनांक २१.०४.२०१६ को

परिचालक पद के लिए प्रेषित किया। परन्तु क्षेत्रीय प्रबन्धक, मेरठ के आदेशानुसार दिनांक ०९.०४.२०१९ के द्वारा याचिकाकर्ता के शैक्षिक प्रमाण पत्रों की जाँच के उपरान्त जब वो फर्जी पाये गये तो उसका मृतक आश्रित नियोजन का दावा निरस्त कर दिया गया। याचिकाकर्ता ने उक्त आदेश दिनांक ०९.०४.२०१९ को आक्षेपित किये बिना ही वर्तमान याचिका के माध्यम से अनुकम्पा नियोजन के लिए अर्ह अभ्यर्थियों की सूची में अपना नाम सम्मिलित कराने की प्रार्थना की है, जिस पर उपरोक्त विधिक बाधा के कारण विचार नहीं किया जा सकता है। अतः वर्तमान याचिका का निस्तारण इस टिप्पणी के साथ किया जाता है कि याचिकाकर्ता उचित विधिक उपचार के लिए स्वतंत्र है।

२५. याचिका संख्या ११३३७ वर्ष २०२५: वर्तमान प्रकरण में याचिकाकर्ता राजीव कुमार के पिता की मृत्यु सेवाकाल में दिनांक १६.१०.२०१८ को हुई और भारी वाहन चलाने का चालन अनुप्ति दिनांक २९.०७.२०१९ को निर्गत हुई। नियमानुसार चालन अनुप्ति के ५ वर्ष बाद ही याचिकाकर्ता चालक पद के लिए अर्ह होता है और क्योंकि जब अनुकम्पा नियोजन का आवेदन पत्र १२.१०.२०२३ को प्रेषित किया तब चालक अनुप्ति की अर्हता नहीं रखता था इसलिए आक्षेपित आदेश दिनांक १४.११.२०२३ द्वारा उसका आवेदन पत्र पर पात्रता पूर्ण न करने के कारण उस पर अग्रिम कार्यवाही नहीं की गई कि संदर्भित पात्रता २८.०७.२०२४ को पूर्ण होगी। अर्थात् याचिका के पिता की मृत्यु (१६.१०.२०१८) के ५ वर्ष के बाद पात्रता पूर्ण होगी। अतः न्यायालय का मत है कि आक्षेपित आदेश अनुकम्पा नियोजन के नियम के दृष्टिगत ही पारित किया गया है और जैसा पूर्व में उल्लेखित किया है कि चयन नियमों में कोई शिथिलता प्रदान नहीं की गयी है इसलिए आक्षेपित आदेश में हस्तक्षेप नहीं किया जा सकता। न्यायहित में याचिका इस टिप्पणी के साथ निस्तारित की जाती है कि उ.प्र.रा.स.प.नि. अगर चाहे तो याचिकाकर्ता को परिचालक के पद के योजन के लिए पुनः विचार कर ले, अगर वो पूर्ण पात्रता रखता हो। याचिकाकर्ता इस संदर्भ में नवीन प्रार्थना पत्र प्रेषित करने के लिए स्वतंत्र है।

२६. याचिका संख्या ९८२२ वर्ष २०२५: याचिकाकर्ता रविउल्लाह अहमद का अनुकम्पा नियोजन का आवेदन परिचालक पद के लिए अपर प्रबन्धक निदेशक के पत्रांक दिनांक ०१.०५.२०२५ द्वारा अर्ह पाया गया और उसका एक सप्ताह का अवैतनिक प्रशिक्षण भी कराया गया परन्तु जब पुलिस सत्यापन के दौरान यह जानकारी प्राप्त हुई कि याचिकाकर्ता के विरूद्ध एक प्रथम सूचना रिपोर्ट सं० १९३ वर्ष २०२०, थाना सिधारी, जिला आजमगढ़ में भारतीय दण्ड संहिता १८६० की धारा ४१९, ४२० व ४०६ के अन्तर्गत दायर की गयी है तो उक्त पत्रांक दिनांक ०१.०५.२०२५ के अनुक्रम में अग्रिम कार्यवाही नहीं की गयी और यह कि याचिकाकर्ता ने इस सम्बन्ध में एक आवेदन पत्र ०२.०६.२०२५ को स्पीड पोस्ट के माध्यम से प्रेषित किया जो अभी लम्बित है। अतः वर्तमान याचिका इस निर्देश के साथ निस्तारित की जाती है कि प्रार्थी अगर ३ सप्ताह के अंदर एक नवीन आवेदन क्षेत्रीय प्रबन्धक उ.प्र.रा.स.प.नि. के कार्यालय में व्यक्तिगत रूप से सौंपता है तो उक्त अधिकारी आवेदन पत्र का निस्तारण उच्चतम न्यायालय द्वारा **अवतार सिंह बनाम भारत सरकार (२०१६) ८ एस.एस.सी. २०१६** के प्रकरण में पारित निर्णय के दृष्टिगत शीघ्रता से करेगा। याचिका तद्नुसार निस्तारित की जाती है।

२७. याचिका संख्या १२८८८ वर्ष २०२५: वर्तमान याचिकाकर्ता के प्रकरण के तथ्य याचिका ९८२२ वर्ष २०२५ के याचिकाकर्ता के समान है कि अनुकम्पा नियुक्ति के लिए अर्ह होने के व प्रशिक्षण के उपरान्त एक आपराधिक प्रकरण (मु.अ.सं. ०१२९/२०२५ दिनांक ०५.०५.२०२५ धारा ११५(२), ३५२, ३५१(३), ३३३ बी.एन.एस.) में याची का नाम आरोपी के रूप में दर्ज होने के कारण अग्रिम कार्यवाही रोक दी गयी है। अतः यह याचिका भी इस निर्देश के साथ निस्तारित की जाती है कि प्रार्थी अगर ३ सप्ताह के अंदर एक नवीन आवेदन क्षेत्रीय प्रबन्धक उ.प्र.रा.स.प.नि. के कार्यालय में व्यक्तिगत रूप से सौंपता है तो उक्त अधिकारी आवेदन पत्र का निस्तारण उच्चतम न्यायालय द्वारा **अवतार सिंह बनाम भारत सरकार (पूर्व में उल्लिखित)** के प्रकरण में पारित निर्णय के दृष्टिगत शीघ्रता से करेगा। याचिका तद्नुसार निस्तारित की जाती है।

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CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 8788 of 2025
&
Connected With Other Cases

Rajat Maurya & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Siddharth Khare, Sr. Advocate

Counsel for the Respondents:
C.S.C., M.N. Singh

Issue for Consideration

1. Criteria of preparation of list of 'suitable candidates' of unreserved category in preliminary examination to make them qualify for final examination.
2. Entitlement of OBC candidates, who might have scored better than unreserved category candidates to be placed in the list of suitable candidates falling in unreserved open category to compete with the unreserved category candidates in main examination.
3. How far granting of interim order by the Supreme Court against the Judgment of Punjab and Haryana High Court, can dilute the ratio laid down in this Judgment?

Headnotes

(A) Service law – Constitution of India – Article 14 and 16 – Right of equality – Reservation – Quota of unreserved category candidates vis-a-vis reserved category candidates – Recruitment for the post of Assistant Engineer – Main examination – List of suitable candidates declared qualified in preliminary examination was prepared as per the ratio of 1:12, instead as per the ratio of 1:15 provided under the advertisement – Validity challenged – Entitlement of OBC candidates who might have scored better than unreserved category candidates to be placed in the list of suitable candidates falling in unreserved open category to compete with the unreserved category candidates in main examination also felt into consideration:

Held : There could not be a quota of open category candidates as unreserved category quota to bar entry of reserved category candidates even while they have scored better marks to match or for better performance to the general category candidate **–** A candidate may have applied under reserved category but if he is not benefited by any relaxation other than the age and concession in fee at the preliminary examination result, then he can always enter unreserved category not only at the stage of final selection but at the same time when preliminary examination/screening test is held which may be only to shortlist candidates to find suitable candidates**.** [Paras 46 and 48]

Held further : The open category means open and when it comes to be a matter of adequate representation qua reserved category candidates, if a reserved category candidates matching cut off marks of candidates of unreserved category candidate, are permitted to march to the unreserved category, then it will be more a case of level playing field to invite all equals to participate in open competition. One must not forget that equality before law and equal protection of laws means "likes to be treated alike" and hence whoever competes with the candidates of open category and falls within the cutoff of that category as may be prescribed, would constitute a class for limited purposes to from suitable candidates' group within the meaning of Article 14 of the Constitution. Confining such a candidate to the reserved category only for the reason that list has been published category-wise, would definitely amount to discrimination. [para 49]

(B) Jurisprudence – Precedent – Principle of *Stare decisis* – Granting of interim order by the Supreme Court against the Judgment of Punjab and Haryana High Court, how far dilute the ratio laid down in this Judgment :

Held : The judgment of Punjab and Haryana High Court in the matter of Haryana Public Service Commission v. Parmila and Another, of course, has been stayed by Supreme Court but this interim order cannot be taken to have watered down or in any manner diluted the legal position emerging out from the judgment in the case of Deependra Yadav on principle of *stare decisis* **– S**o long as the judgment in the case of Deependra Yadav stands, it would amount to a settled legal position as a binding precedent on same principle of *stare decisis*. [Paras 44 and 45]

(C) Interpretation of statute – Constitution of India – Article 14 – Equality before law and Equal protection of laws –Meaning:

Held : Equality before law and equal protection of laws means 'likes to be treated alike'. [Para 49] (E-1)

Case Law Cited

Saurav Yadav & Others v. State of U.P. & Others, (2021) 4 SCC 542; Jitendra Kumar Singh & Another v. State of U.P. & Another, (2010) 3 SCC 119; and Deependra Yadav & Others v. State of Madhya Pradesh, 2024 SCC OnLine SC 724; Special Leave Petition (C) No. 1868 of 2023, Pushpendra Kumar Patel and others v. High Court of Madhya Pradesh; SLP (C) 1868 of 2023 decided on 07.07.2023; Civil Writ Petition No. 14279 of 2024; Gokala Ram v. The Rajasthan High Court and others (Rajasthan High Court); Andhra Pradesh Public Service Commission v. Baloji Badhavath and others, (2009) 5 SCC 1; Alok Kumar Pandit v. State of Assam and others (2012) 13 SCC 516; Sanjeev Kumar Singh v. State of U.P. and others, 2007 (2) ADJ 150; Anushuchit Jati, Evam Jan Jati Adhikari Karmchari Sangh (AJJAKS) v. M.P. High Court of Madhya Pradesh and Others, decided on 21.11.2024; U.P. Power Corporation Ltd and Another v. Nitin Kumar and 9 Others being Special Appeal No. 310 of 2015 decided on 19.5.2015. **– referred to.**

List of Acts

U.P. Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 – Rules 2(viii), 2(ix), 3(1), 3(2), 3(3), 3(4) and 3(5); U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 – Ss. 3(1), (5) and (6).

List of Keywords

Selection; Preliminary examination; List of suitable candidates; Final examination; Reservation; Minimum marks; Minimum qualifier percentage of marks; Interview; Recruitment; Unreserved category; Reserved category; Open selection; Migration of of the reserved category candidate to the unreserved category candidate; Methodology; General category; Adequate representation; Arbitrary; Principle of fair play; Open category; Competition; Efficiency test; Principle of *Stare decisis*; Binding precedent; Persuasive value; Grey area; Scheduled Caste; Scheduled Tribes; Other Backward Caste; Economically Weaker Sections; Touchstone; Principle of 'level playing field'; Common law judgment; Discrimination; Arbitrariness; Relaxtion; Age; Fee concession.

Case Arising From

Preparation of result of preliminary examination held for the post of Assistant Engineer.

Appearances for Parties

Advs. for the Petitioners : Ashok Khare, Senior Advocate, Himanshu Singh, Siddharth Khare

Advs. for the Respondeents : Anoop Trivedi, Senior Advocate, Nipun Singh, Naman Agarwal, Ritaj Vikram Singh, M. N. Singh, P.K. Srivastava

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

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Himanshu Singh, learned Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioners, Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Nipun Singh, Sri Naman Agarwal and Sri Ritaj Vikram Singh, learned Advocates appearing for the Uttar Pradesh Public Service Commission and Sri P.K. Srivastava, learned Additional Chief Standing Counsel for State of Uttar Pradesh and other State respondents.

2. All these three petitions since raise common question of law, they have been heard simultaneously and are now being decided by this common judgment.

3. The subject matter of controversy arising in all these petitions relate to preparation of result of preliminary examination conducted by Uttar Pradesh Public Service Commission *(hereinafter referred to as 'Commission')* for the purposes of selection and appointment upon different categories of posts in the Departments under the State, namely Assistant Engineer (Civil/ Mechanical) and likewise posts falling in Group-B, Grade-2 post of District Horticulture Officer/ Food Processing Officer in the department of Agriculture and Senior Technical Assistant, Group - A post in different branches of

Chemistry/ Botany/ Agronomy/ Plant Protection and Development. In all 604 posts were initially advertised in total 5 groups by the Commission vide advertisement No. A-9/E-1/2024 dated 17.12.2024 inviting applications from eligible candidates. Later on 5 posts were added totalling to 609 posts. The petitioners in these petitions have applied for the posts of Civil/ Mechanical Engineer pursuant to the advertisement and also some of the petitioners have applied for Group-B posts of District Horticulture Officer/Food Processing Officer and Group-A category posts Senior Technical Assistants in different branches, Chemistry/ Botany/ Agronomy/ Plant Protection and Development.

4. For the purpose of statement of facts, legal pleas taken and reference made to certain Rules that are applicable in connection with the matter, writ petition in the matter of Rajat Maurya & 41 others v. State of U.P. & 6 Others being Writ - A No. 8788 of 2025, is taken up as a leading petition.

5. There is no quarrel as to number of vacancies, the preliminary examination (screen test) conducted by the Commission. The dispute erupted only upon result being published on 26.05.2025 qualifying only 7358 candidates against 609 vacancies which according to the petitioners was not in consonance with clause 11(8) of the advertisement.

6. In order to appreciate the controversy and before I deal with the arguments advanced on behalf of rival parties, I consider it appropriate to refer to the important clauses of the advertisement and the U.P. Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 *(hereinafter to be referred to as 'Rules, 1986')* and the The Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 *(hereinafter referred to as 'Act, 1994')*. Clauses 11(8), 11(13) and 11(14) of the advertisement relevant for in the case, are reproduced hereunder:

"11. IMPORTANT INSTRUCTIONS FOR CANDIDATES:-

(8). On the basis of the result of Preliminary Examination, ***fifteen times candidates to the number of vacancies shall be declared successful for the Main Examination*** *and three times candidates to the number of vacancies shall be called for the interview.*

(13. The ***minimum efficiency standard for S.C. & S.T. candidates is fixed 35%*** *i.e. the Candidates of these Categories shall not be placed in the merit/select list if they have secured less than 35% marks in the Preliminary/Main examination. Similarly,* ***the minimum efficiency standard for the candidates of other categories is fixed 40%*** *i.e. such candidates shall not be placed in the merit/select list if they have secured less than 40% marks in the Preliminary/Main examination. All such candidates who have secured less marks than the marks of minimum efficiency standard as fixed by the Commission shall be treated disqualified.*

(14). The candidates of reserved categories will be adjusted against the unreserved category in the final selection only if he/she will not have availed any benefit/concession in qualifying standard at the stage of Preliminary/ Main Examination."

(emphasis added)

7. Upon reading clause 11(8) as quoted above, it becomes clear that after the preliminary examination is held, fifteen times candidates qua the vacancies advertised shall be declared/ placed in the list of eligible candidates for the main examination and three times of the candidates qua the vacancies advertised shall be called for the interview finally.

8. The minimum efficiency standard for SC and ST category candidates is fixed 35% minimum marks and 40% minimum marks for the OBC and unreserved candidates vide clause 11(13).

9. Clause 11(14) which is a clause that needed interpretation and is in issue, it is provided that the reserved category candidates will be adjusted against unreserved category at the stage of final selection, provided such category candidate has not availed any benefit/ concession in qualifying standard at the stage of preliminary examination.

10. The relevant rules 2(viii), 2(ix), 3(1), 3(2), 3(3), 3(4) & 3(5) of the Rules, 1986 are reproduced hereunder:

"2. Definitions.--(i) "Commission means Public Service Commission Uttar Pradesh.

(viii) ***"Suitable candidates"*** *means candidate securing minimum number of marks as may be fixed by Commission in its discretion at Preliminary Examination thereby enabling him to appear in the main examination or interview as the case may be;*

(iv) "Main Examination or Interview" means the examination or interview as per relevant Service rules and Government orders.

3. Holding of preliminary examination.

(1) Notwithstanding anything to the contrary contained in relevant service rules or Government orders regarding recruitment, the ***Commission may, with the prior approval of Government hold preliminary examination for selection of suitable candidates*** *for admission to main examination or interview, as the case may be.*

(2) Where a preliminary examination is held only such ***candidates as qualify in the preliminary examination will be entitled for admission to Main Examination or Interview,*** *as the case may be.*

(3) The marks ***obtained in the preliminary examination will not be counted for determining the final orders of merit.***

(4) (i) Preliminary examination will consist of two question papers of two hours' duration each in cases where it is to be followed by main examination. Out of the two question papers one will be the compulsory paper of General Knowledge/ General Studies while the other will be of one of the subjects which may be offered by the candidates out of the optional subjects allowed for the Main Examination of that Service. In case there be no optional subjects allowed for the Main Examination, the second subject to be offered may be prescribed by the Commission in its discretion from amongst the compulsory subjects allowed for the examination.

(ii) In cases where selection by interview alone is prescribed the preliminary examination will be of one paper of two hours duration in such subjects as may be prescribed by the Commission in its discretion covering mainly questions on General Knowledge, General Studies and subjects relevant to the nature of job of the post.

(5) Question papers will be set in the language allowed for main Examination and in English and Hindi in cases where selection by interview is prescribed in Service rules and Government orders.

(6) The Preliminary Examination shall be held at places and on dates and time as is fixed by Commission."

(emphasis added)

11. From a bare reading of the aforesaid provisions, it comes out that a candidate who qualifies the preliminary examination by obtaining minimum qualifier percentage of marks as may be fixed under the advertisement, is termed as "Suitable Candidate" and main examination and interview are referable to the relevant service rules which provide for selection through written examination or walk-in-interview. There is no quarrel as to the conduct of main examination and interview for the purposes of recruitment against the vacancies advertised under the relevant departmental service rules. Rule 3 of the Rules, 1986 authorizes the Commission to hold preliminary examination to shortlist candidates for admission to main examination and/ or interview, as the case may be, with the prior approval of the Government and in the event preliminary examination is held, a candidate who qualifies, shall be a suitable candidate to appear in main examination or interview as the departmental service rules may provide. Rules further provide that preliminary examination is only qualifying examination for a candidate to become 'suitable candidate' for the purposes of main examination or interview as the case may be and the marks obtained and the merit secured in such preliminary examination will have no bearing as to the final merit to be determined in the main examination and/ or interview. Rule 3(iv) provides for question papers and the duration in terms of hours in the event it is to be followed by main examination and such papers will consist of General Knowledge and General Studies and also one of the optional subjects as the Commission may prescribe with the concurrence of the State Government. The ratio of marks is also prescribed under the relevant rule 4. The rules further provide for language of the paper to be the same i.e. prescribed/ allowed for main examination and will be in English and Hindi in the event preliminary test is followed by interview under the relevant service rules or the Government Orders. The rules also provide for holding preliminary examination at place and time at the discretion of the Commission.

12. Now coming to reservation Act, 1994, I find rule 3(1), (5) and (6) to be relevant for the purposes of resolving the issue involved in the present case and are accordingly reproduced hereunder:

***3. Reservation in favour of Scheduled Castes, Scheduled Tribes and other backward Classes.**--(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentage of vacancies to which*

recruitment's are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens—

(a) in the case of Scheduled Castes Twenty-one per cent;

(b) in the case of Scheduled Tribes Two per cent;

(c) in case of Other Backward Classes of citizens Twenty-seven per cent:

Provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II.

(5). The State Government shall, for applying the reservation under sub-Section (1), by a notified order, issue a roster which shall be continuously applied till it is exhausted.

(6). If a person belonging to any of the categories mentioned in subsection (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1)."

13. All that aforesaid rule 3(1) provides for percentage of vacancies for the purposes of reservation *qua* direct recruitment on the post in the Government Department and provides for procedure to apply reservation as per roster provided under sub-section (5) in favour of the persons belonging to SC/ ST and OBC citizens. The percentage provided for SC candidate is 21%, for ST 2% and for OBC 27%. There are certain exceptions carved out to deny reservation to OBC candidates in respect of the persons mentioned in schedule II of the Act.

14. Now coming to the controversy raised in these petitions, I find that petitioners are basically aggrieved for the ratio as contained in clause 11(8) for it being not strictly adhered to as pleaded vide paras 23, 24 &25 of the writ petition and for the reason that only 7358 candidates were made to qualify as 'suitable candidates' against 609 vacancies advertised and which accounts for a ratio of 1:12, whereas, according to the petitioners, as was argued before the Court, if the ratio 1:15 was made applicable then 9135 candidates would have been made to qualify for the second stage i.e. main examination.

15. Plea was taken that in view of the provisions contained under Rules, 1986, the Commission ought not to have prepared and published preliminary examination results categorywise, inasmuch as, a list ought to have been drawn of unreserved category candidates in the first instances as per the minimum efficiency standard fixed to make all successful candidates to qualify irrespective of their special reserved categories provided they met the minimum efficiency standard as was prescribed under clause 11(13). This logic appears to be based upon principle of migration from reserved to unreserved category, the latter being open to all.

16. Thus, Sri Ashok Khare, learned Senior Advocate, in a nut shell, raised following arguments:

(i) Preparation of result categorywise was against the express provisions of Rules, 1986.

(ii) The unreserved candidates cannot be classified as a category reserved in itself to oust the entry of reserved

category candidates even at the stage of preliminary examination which may be merely a screen test.

(iii) The Commission was not justified in qualifying lesser number of candidates in the preliminary examination/ screen test only for the reason that a candidate if had applied against different categories of vacancies and qualified, then such candidate being common against such different vacancies would be counted as one candidate against all such posts multiple times to form the ratio of 1:15 even though actual number may not attain the parameter of 1:15 ratio.

17. In support of his above submissions, learned Senior Advocate Mr. Khare has placed reliance upon the judgment of Supreme Court in the case of **Saurav Yadav & Others v. State of U.P. & Others, (2021) 4 SCC 542; Jitendra Kumar Singh & Another v. State of U.P. & Another, (2010) 3 SCC 119;** and **Deependra Yadav & Others v. State of Madhya Pradesh, 2024 SCC OnLine SC 724.**

18. Meeting the arguments advanced as above on behalf of the petitioners, Sri Anoop Trivedi, learned Senior Advocate at the very threshold placed a chart after serving a copy thereof upon learned Senior Counsel appearing for the petitioners, in respect of Group1, Group-2, Group-3, Group-4 and Group-5 posts and posts under special drive selection, to demonstrate that Commission strictly adhered to clause 11(8) in preparing the list as a result of preliminary examination. The chart placed before the Court is reproduced hereunder:

Group wise/Category wise detail of successful candidates in Combined State Engineering Services (General/ Special Recruitment) (Preliminary) Examination - 2024, released on 26.05.2025 is as follows:-

Group - 1

Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)

Branch - Civil Engineering

Total Post - 468

Category	*No. of Vacancies*		*No. of required candidates at a ratio of 1 to 15*	*No. of candidates finally available*
Unreserved	*187*		*187x15=2805*	*2443*
S.C.	*129*		*129x15=1935*	*1234*
S.T.	*05*		*5x15=75*	*29*
O.B.C.	*105*		*105x15=1575*	*1648 (1575+73)*
E.W.S.	*42*		*42x15=630*	*371*
D.F.F.	*07*		*7x15=105*	*24*
P.H.	*18*	*L.V.-01*	*1x15=15*	*03*
		H.H.-08	*8x15=120*	*04*
		O.A.-04	*4x15=60*	*02*
		B.-01	*1x15=15*	*00*
		D.-01	*1x15=15*	*00*
		O.L.	*1x15=15*	*06*

		-01		
		D.W.-01	1x15=15	00
		A.A.V.-01	1x15=15	00
Ex.-Servicemen	22		22x15=330	00
Women	92		92x15=1380	459

Group -2

Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)

Branch - Mechanical Engineering

Total Post - 91

Category	No. of Vacancies	No. of required candidates at a ratio of 1 to 15	No. of candidates finally available
Unreserved	61	61x15=915	916 (915+1)
S.C.	09	9x15=135	136 (135+1)
S.T.	04	4x15=60	13
O.B.C.	09	9x15=135	137 (135+2)
E.W.S.	08	8x15=120	126 (120+6)
D.F.F.	01		1x15=15	10
P.H.	04	L.V.-01	1x15=15	01
		H.H.-01	1x15=15	01
		O.A.-02	2x15=30	08
Ex.-Servicemen	03		3x15=45	09
Women	17		17x15=255	96

Group-3

Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)

Branch - Electrical Engineering

Total Post - 07

Category	No. of Vacancies	No. of required candidates at a ratio of 1 to 15	No. of candidates finally available
Unreserved	04	4x15=60	63 (60+3)
S.C.	02	2x15=30	32 (30+2)
S.T.	00	00	00
O.B.C.	1	1x15=15	16 (15+1)
E.W.S.	00	00	00
D.F.F.	00	00	00
P.H.	00	00	00
Ex.-Service	00	00	00

men			
Women	*01*	*1x15=15*	*16 (15+1)*

Group-4

Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)

Branch - Electrical/Mechanical Engineering

Total Post -09

Category	*No. of Vacancies*	*No. of required candidates at a ratio of 1 to 15*	*No. of candidates finally available*
Unreserved	*05*	*5x15=75*	*77 (75+2)*
S.C.	*04*	*4x15=60*	*74 (60+14)*
S.T.	*00*	*00*	*00*
O.B.C.	*00*	*00*	*00*
E.W.S.	*00*	*00*	*00*
D.F.F.	*00*	*00*	*00*
P.H.	*00*	*00*	*00*
Ex.-Servicemen	*00*	*00*	*00*
Women	*01*	*1x15=15*	*16 (15+1)*

Group-5

Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)

Branch - Rural Engineering

Total Post -12

Category	*No. of Vacancies*	*No. of required candidates at a ratio of 1 to 15*	*No. of candidates finally available*
Unreserved	*05*	*5x15=75*	*31*
S.C.	*04*	*4x15=60*	*14*
S.T.	*00*	*00*	*00*
O.B.C.	*02*	*2x15=30*	*26*
E.W.S.	*01*	*1x15=15*	*03*
D.F.F.	*00*	*00*	*00*
P.H.	*00*	*00*	*00*
Ex.-Servicemen	*00*	*00*	*00*
Women	*02*	*2x15=30*	*07*

(Special Recruitment)

Detail of candidates available as per rules against Category wise Vacancies

Branch - Civil Engineering

Total Post -22

Category	*No. of Vacancies*	*No. of required candidates at a ratio of 1 to 15*	*No. of candidates finally available*
S.C.	*00*	*00*	*00*
S.T.	*03*	*3x15=45*	*29*

O.B.C.	*19*	*19x15=285*	*289 (285+4)*
D.F.F.	*00*	*00*	*00*
P.H.	*01*	*1x15=15*	*02*
Ex.-Service men	*01 (H.H. - 01)*	*1x15=15*	*00*
Women	*04*	*4x15=60*	*67 (60+7)*

Note - As per the order of the Commission dated 01.08.2019, for those examinations wherein the selection process is finally conducted through preliminary examination, main examination and interview, the marks and category wise cut off marks related to preliminary examination, main examination and final selection of those examinations are released after the final selection.

Sanjay Kumar Verma

(Section Officer)"

19. Defending the stand of the Commission in preparing categorywise list of suitable candidates in preliminary examination and compliance of clause 11(8) of advertisement was there, Sri Trivedi firstly argued that posts were categorized as per the reservation applicable both vertical and horizontal and then in the ratio of 1:15 the candidates were made to qualify as suitable candidates for main examination. Mr. Trivedi however, added that since the results were published categorywise to meet the mandate contained under the reservation Act, 1994 and the conditions laid in the advertisement for prescribing different set of efficiency standard and office memorandum issued earlier in order to ensure representation of all the categories to invite them to compete at a level playing filed, a stage of final examination, to *wit* 'open selection', that candidates were confined to their respective categories only. Hence, according to Mr. Trivedi, if in the unreserved category candidates belonging to unreserved were not able to qualify to form the ratio of 1:15, they were called in lesser number as 'suitable candidates' to qualify for main examination and this, according to Mr. Trivedi, may have happened to any of the categories. Thus, the qualifying preliminary examination result, according to Mr. Trivedi, was bound to be category specific.

20. The second argument advanced by Mr. Trivedi is, when the advertisement itself provided that a reserved category candidate would be adjusted against unreserved category in the final selection and the petitioners accepted such an advertisement and conditions laid therein, it was not open for them to make a hue and cry now when the preliminary examination results have been declared as per the conditions prescribed under clause 11(14) of the advertisement.

21. Sri Trivedi has also placed before this Court memorandum issued by the Secretary, Public Service Commission dated 9th January, 2020 to buttress his argument that whatever was prescribed under the advertisement had the support of the memorandum/ circular issued by the Public Service Commission regarding migration of the reserved category candidate to the unreserved category candidate including those falling EWS category only at the stage of final selection and in the absence of any rule governing modalities, the memorandum had the binding force.

22. Sri Trivedi placed reliance upon the very decision of Jitendra Kumar Singh (supra) already relied upon by learned Senior Advocate appearing for the petitioner and has placed paragraphs 75, 76 and 77 thereof that run as under:

*"**75.** In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination.* ***At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination.*** *With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit.* ***Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.***

76. Mr Rao had suggested that ***Section 3(6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age-limit. We are unable to accept the aforesaid submission. Section 3(6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Sections 3(1), 3(6) and Section 8 are interconnected. Expression "open competition" in Section 3(6) clearly provides that all eligible candidates have to be assessed on the same criteria.***

77. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the uniform selection criteria. All of them have participated in the preliminary written test and the physical test followed by the main written test and the interview. Such being the position, we are unable to accept the submissions of the learned counsel for the appellant-petitioners that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the open category seats. It was perhaps to avoid any further confusion that the State of Uttar Pradesh issued directions on 25-3-1994 to ensure compliance with the various provisions of the Act. Non-compliance with any officer was in fact made punishable with imprisonment which may extend to period of three months."

(emphasis added)

23. Sri Trivedi has further placed reliance upon certain observations made by the Supreme Court in Special Leave Petition (C) No.- 1868 of 2023 Pushpendra Kumar Patel and others v. High Court of

Madhya Pradesh, whereby question of law as to the applicability of principle of migration at the stage of preliminary examination was left open.

24. Sri Trivedi submitted that in the case of Pushpendra Kumar Patel (supra) vide paragraphs 41 and 42 the Madhya Pradesh High Court had taken departure from the principle laid down in the judgement by same High Court earlier in the matter of **Kishore Choudhary v. State of Madhya Pradesh and another** in Writ Petition No.- 542 of 2021, wherein migration was held to be applicable at both stages of preliminary and main examination as per the constitutional scheme flowing from the Article 14 and 16 of the Constitution.

25. Sri Trivedi submitted that in the case of Deependra Yadav and others v. State of Madhya Pradesh and others 2024 SCC Online SC 724 that arose from the same High Court, reliance was placed upon the judgment in the case of Kishore Choudhary (*supra*) as no SLP had been preferred against the said judgment but upon a contradictory stand taken in the Purshpendra Kumar Patel (supra) and upon an SLP being preferred which though of course came to be dismissed but the Court left question of law open. Vide paragraph 41 and 42 of the judgment in the case of **Pushpendra Kumar Patel** (*supra*) the Madhya Pradesh High Court has held thus:

"41. *The concept of migration which is purely merit centric cannot be made available to be availed by reserved category candidates at the stage of Preliminary Examination in which comparative merit of the candidates is not assessed. The migration therefore can be applied in the examination where comparative merit is assessed which herein is not the Preliminary Examination.*

42. If right to migrate is permitted to be availed by reserved category candidate at the stage of result of Preliminary Examination then that would violate the very foundation on which the concept of migration stands. *If the argument of learned counsel for the petitioners is accepted, then an anomalous situation would arise where candidates who have not been subjected to any comparative assessment on merit are allowed to invoke the principle of migration which is founded solely on merit."*

(emphasis added)

26. The order passed by the Supreme Court dated 7th July, 2023 arising out of the aforesaid judgment in the matter of SLP (C) 1868 of 2023 is reproduced hereunder:

"Upon hearing the counsel the Court made the following

ORDER

SLP (C) No. 1868/2023

After opening the sealed envelope, we have seen the marks obtained by one of the petitioners, namely Amit Kumar Kirar, who had appeared in the written examination. He has failed to qualify. The other petitioners did not appear in the written examination.

In view of the aforesaid position, the present special leave petition is rendered as infructuous and is disposed of accordingly, leaving the question of law open.

SLP(C) No. 4843/ 2023

This special leave petition has become infructuous as the examination has already held.

In view of the aforesaid position, the special leave petition is dismissed as infructuous.″

(emphasis added)

27. Sri Trivedi also submitted that judgment of Punjab and Haryana High Court in the case of Haryana Public Service Commission v. Parmila and others in LPA No.- 329 of 2024 that permitted preparation for the fresh merit list of the preliminary examination test of open category by counting the marks of all candidates, be it of reserved or non reserved category, came under challenge before the Supreme Court in Special Leave to Petition No.- 38804 of 2025 and Supreme Court vide interim order dated 26th August, 2025 stayed the judgment of Division Bench of Punjab and Haryana High Court by making following observations:

"*1. Delay condoned.*

2. The short issue which arises for our consideration is as regards migration from reserved category to unreserved category at the stage of screening.

3. The High Court by the impugned order has allowed such migration.

4. The submission on behalf of the petitioner is that such migration would be permissible only if either the rules or the advertisement permits, otherwise a screening test is not one which determines merit and, therefore, general principle of merit based placement would not apply. It is submitted that advertisement does not permit such migration. In support of the above submission, the learned counsel for the petitioner has placed reliance on two clauses namely clauses 1(i) and 1(k) in the advertisement.

5. Matter requires consideration.

6. Issue notice, returnable in six weeks.

7. In the meantime, the effect and operation of the impugned order dated 09.04.2025 shall remain stayed.″

(emphasis added)

28. Sri Trivedi has also sought to distinguish the judgment in the case of Deependra Yadav (supra) by taking a plea that the said judgment was dealing with interpretation of relevant rules framed in the State of Madhya Pradesh for applicability of migration as such even at the preliminary stage and hence came to finally conclude vide paragraph 30, 31, 32 and 33 that even at the stage of preliminary examination test, the open category will remain open for all the candidates for the purposes of preparation of list of eligible candidates for main examination.

29. Sri Trivedi has also placed reliance upon the judgment of Division Bench of Chhattishgarh at Bilaspur in the case of **Mukesh Kumar and others v. State of Chhattishgarh,** in which the Court relied upon the judgment of Pushpendra Kumar Patel (supra) and vide paragraph 9 has held thus :

"9. Considering the fact that the selection process is already over, we are not inclined to unsettle the thing which has already been settled and further considering the fact that as per clause 6 of the terms of the advertisement dated 28.06.2023, the selection process has been prescribed in three stages. First stage is preliminary examination which consists of 50 Objective type questions and the candidates have to be called in ratio of 1 : 10 and to participate in the skill test. This clause specifically provides that the marks obtained in this examination will not be added for preparation of merit list. Thereafter, in the second stage skill test has to be conducted for Assistant Grade III and the final select list as well as waiting list have to be prepared as per the marks obtained in the skill test. As such, the first stage examination is nothing but a step for shortlisting of the candidates which is the process of evaluating and selecting a candidate with aim to identify the most qualified candidates for further consideration in selection process. The first stage examination being shortlisting of the candidates therefore, it is not necessary for the answering respondent to adopt vertical reservation as submitted by the learned counsel for the petitioners and further considering the finding recorded by the learned Single Judge while dismissing the writ petition filed by the writ petitioners/appellants herein, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error in the impugned order warranting interference by this Court."

30. Sri Trivedi has also placed reliance upon another Division Bench judgment of Rajasthan High Court in the case of **Gokala Ram v. The Rajasthan High Court and others** (D.B. Civil Writ Petition No. 14279 of 2024), wherein the Court held that once a candidate participated in the selection process pursuant to the advertisement agreeing to the methodology adopted therein, subsequently he cannot maintain a complaint against the procedure adopted in the selection process. He placed paragraph 9 of the said judgment before the Court which is reproduced hereunder:

"9. It is now a well settled position in law that rule of migration under the Rules of 2010 will not have any applicability while preparation of select list at the stage of screening through Preliminary Examination. ***The rule of migration will only become applicable at the time of preparation of final merit list based on marks obtained by the candidates in written examination and interview. We may also add here that the Rules of 2010 and the advertisement dated 09th April 2024 both provide for preparation of a select/merit list after Preliminary Examination category-wise. The petitioners did not challenge the same before participating in the Preliminary Examination.*** *Hon'ble Supreme Court in the case of "Rekha Sharma v. The Rajasthan High Court, Jodhpur & Anr.": Civil Appeal No.5051/2023 decided on 21st August 2024 held that* ***the candidates after they having found that their names do not appear in the list of successful candidates of Preliminary Examination, could not have questioned the result on the ground that the respondents had not declared the cut-off marks for their categories.***

(emphasis added)

31. It is also argued by Sri Trivedi, learned Senior Advocate that petitioner being unsuccessful candidates as they have

not found place in the list of suitable candidates prepared at the stage of preliminary test/ screening test, they cannot maintain this petition.

32. Sri Trivedi has thus sought to contend that petition itself is not maintainable at the instance of unsuccessful candidates. Sri Trivedi also raised a point that in the event list of unreserved candidates is prepared incorporating the names of those of reserved categories who could march to the unreserved category for having scored at par or above the last cut off of marks of unreserved category candidate, they may not match with the general category in the final examination and then they would again make a plea for being repatriated to the reserved category.

33. Thus, according to Sri Trivedi this is like a see-saw battle if argument of Mr. Khare for preparation of unreserved category result incorporating reserved category candidates is accepted and it would further render selection process not only complexed but also discriminating and impermissible on sound principle of adequate representation at a level playing field.

34. On the point of adequate representation of all the categories of the candidates to give due participation by creating equal playable field i.e. stage of final examination, Sri Trivedi has sought to distinguish the judgment of Supreme Court in the case of **Andhra Pradesh Public Service Commission v. Baloji Badhavath and others (2009) 5 SCC 1.** However, before placing the judgment, Sri Trivedi contended that Court in that case was basically dealing with the Andhra Pradesh Public Service Commission Rules and Regulations and the Government order dated 31st December, 1997 which required candidates to be called in for written examination in the ratio 1:50 without reference to category/ community vis-a-vis the earmarked reservation to their particular community. While Andhra Pradesh High Court held that Government order dated 31st December, 1997 insofar as it uses words irrespective of communities was liable to be declared irrational having no nexus with object sought to be achieved. The judgment was reversed by Supreme Court in SLP (*supra*) holding that once Public Service Commission had framed rules prescribing procedure, a Court ordinarily would not interfere with, unless it is found to be arbitrary or against the principle of fair play. Vide paragraphs 30, 31, 32 and 35 the Court has held thus:

"30. *The proviso appended to Article 335 of the Constitution, to which our attention has been drawn by Mr Rao, cannot be said to have any application whatsoever in this case. Lowering of marks for the candidates belonging to the reserved candidates (sic categories) is not a constitutional mandate at the threshold. It is permissible only for the purpose of promotion. Those who possess the basic eligibility would be entitled to appear at the main examination. While doing so, in regard to General English whereas the minimum qualifying marks are 40% for OCs, it would be 35% for BCs and 30% for SC/STs and physically handicapped persons. However, those marks were not to be counted for ranking.*

31. *We have noticed hereinbefore, that candidates belonging to the reserved categories as specified in the notification are not required to pay any fee. Their age is relaxed up to five years. It is, therefore, not correct to contend that what*

is given by one hand is sought to be taken by another. They can, thus, appear in the examination for a number of times. Indisputably, the right conferred upon the respondent-writ petitioners in terms of Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 was to be protected. The extent of relaxation has been recognised. By reason of such a provision, the right to be considered has not been taken away.

32. *Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.*

35. *Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 would apply only where shortlisting is done. The first part of the said Rule empowers the Commission to restrict the number of candidates to be called for interview to such an extent as it may deem fit. While shortlisting, however, it may hold a written test or provide for a preferential or higher qualification and experience and only for that purpose it is required to take into account the requirements with reference to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and the rule of reservation in favour of local candidates."*

35. Sri Trivedi summed up his arguments by contending that there was no final conclusive authority on the contentious issue in view of the fact that a SLP had been entertained by Supreme Court staying the judgment of Punjab and Haryana High Court as to the preparation of list of suitable candidates at the stage of preliminary examination/ screening test by incorporating and taking candidates of reserved category. According to Sri Trivedi, the law is yet to be crystallized and a judgment is a precedent for the case it decides and cannot be taken as elucid theorem to make the principle enunciated thereunder as a rule of general applicability.

36. In the rejoinder argument to the submission of Sri Trivedi, as to how many times candidates of reserved category can be placed in general and then can be repatriated, Sri Ashok Khare, learned Senior Advocate appearing for the petitioner, has placed reliance upon the authority of Supreme Court in the case of **Alok Kumar Pandit v. State of Assam and others (2012) 13 SCC 516** to take a plea that migration from reserved category to unreserved category and then repatriation to reserved category for the purposes of having better post available for having secured better marks to top reserved category candidates have been held permissible and such candidate belonging to reserved category originally, can be still permitted to opt for higher post falling in reserved category for reserved quota being applied. He has placed paragraph 17 and 18 of the judgment that are reproduced hereunder:

"17. *In Anurag Patel v. U.P. Public Service Commission [(2005) 9 SCC 742 : 2005 SCC (L&S) 563] this Court was called upon to consider whether more meritorious candidates of reserved category who were adjusted against the posts earmarked for general category were not entitled to make a choice of the post earmarked for reserved category. The facts as noticed by this Court were that the third respondent i.e. Rajesh Kumar Chaurasia in CA No. 4794 of 1998, who secured 76th place in the select list, filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in CA No. 4794 of 1998 i.e. Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the third respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8 persons, all belonging to Backward Classes, who find their names in the select list filed Writ Petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Sanker Maurya and the second petitioner i.e. Shri Abdul Samad were at Serial Nos. 13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserved category were given postings on the ground that those posts were earmarked for being appointed in Class II services.*

18. *After noticing the judgments in Ritesh R. Sah v. Y.L. Yamul [(1996) 3 SCC 253] and State of Bihar v. M. Neethi Chandra [(1996) 6 SCC 36] the Court observed: (Anurag Patel case [(2005) 9 SCC 742 : 2005 SCC (L&S) 563] , SCC pp. 746-47, para 5)*

"5. ... In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later."

37. Besides the above, in rejoinder no additional arguments have been advanced, rather Mr. Khare gave up his first argument regarding preparation of list of suitable candidates categorywise by stating that he was not pressing the same any more.

38. I must refer here the chart reproduced above, as well. The chart shows that as against 187 unreserved vacancies of Assistant Engineer (Civil) total 187 x 15 (1:15) = 2805 candidates were to be called for main examination but only 2443 candidates were called. Likewise in Group 5 Rural Engineering Branch as against 5 unreserved vacancies 5 x 15 (1:15) = 75 candidates should have been placed in the list of suitable candidates for main

examination but only 31 candidates were placed. This in fact is the grievance of petitioner. However, the chart shows that all those who had minimum prescribed efficiency have been placed in the list to qualify for main examination in the ratio of 1:15 and this is how in different categories candidates have been placed in the qualifying list more than the number required as per 1:15 ratio.

39. The chart further shows that in respect of Group - 3 category only one OBC post was there against which 15 candidates have been called for and so also the chart shows that in Group - 4 category there being no post in OBC quota, no candidate has been placed. The grievance of the petitioner for the reason is that those OBC candidates who might have scored better than unreserved category candidates could have been placed in the list of suitable candidates falling in unreserved open category to compete with the unreserved category candidates in main examination.

40. Having heard learned counsel for the respective parties and having perused the records, in long and short of it, the issue I find to be arising is, how to prepare a list of 'suitable candidates' of unreserved category in preliminary examination/ screening test to make them qualify for final examination.

41. In order to resolve the above issue as far as the preparation of preliminary examination result in question is concerned, I may clarify here that age relaxation and concession in fee for submission of application form provided to reserve category candidates is only statutory concession and not relaxation as such referred to under the circular of the Public Service Commission dated 9th January, 2020 and clause 14 of the advertisement.

42. In my above view, I find support from Division Bench judgment of this Court in the case of **Sanjeev Kumar Singh v. State of U.P. and others, 2007 (2) ADJ 150** and the judgment of Supreme Court in the case of **Jitendra Kumar Singh** (*supra*), wherein it was held that *"With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit"*.

43. With the above perspective in mind as to the legal position regarding reserved category marching to the unreserved category for the purposes of final selection on merit, I proceed to examine the issue. It is true that judgment in the case of Deependra Yadav (*supra*) was considering the relevant rules framed by the State Government of Madhya Pradesh, the subsequent amendments made therein and then withdrawal of amendment restoring the previous unamended rule and further that, judgment in the case of Kishore Choudhary (*supra*) by Madhya Pradesh High court was contradicted to in another judgment of the bench of same strength of the said High Court in the case of Pushpendra Kumar Patel, but still relying upon the judgment in Deependra Yadav's case, to hold that preparation of list of unreserved category would include reserved category candidates as well if they score at par with general category in efficiency test, another division bench presided over by the then Chief Justice Vide paragraph 10 in the matter of **Anushuchit Jati, Evam Jan Jati Adhikari Karmchari Sangh (AJJAKS) v.**

M.P. High Court of Madhya Pradesh and Others, decided on 21st November, 2024 held thus:

"In view of the above, we direct that henceforth in all future recruitment exams conducted by Examination Cell of High Court of Madhya Pradesh benefit of migration shall be extended to meritorious reserved category candidates in unreserved category in all the stages of selection process. It is however clarified that ongoing recruitment examination conducted by the Examination Cell wherein examination (preliminary or mains as the case may be) has already been conducted shall not be affected by this order. "

44. Nothing has been placed before me to even infer that this above judgment was further appealed against before the Supreme Court. In so far as the judgment of Punjab and Haryana High Court in the matter of Haryana Public Service Commission v. Parmila and Another (*supra*) is concerned, the said judgment of course, has been stayed by Supreme Court but this interim order cannot be taken to have watered down or in any manner diluted the legal position emerging out from the judgment in the case of Deependra Yadav on principle of *stare decisis.*

45. I have further noticed the order of the Supreme Court which has been reproduced hereinabove in the matter of Pushpendra Kumar Patel, that leaves question of law open. In my considered view this would only mean that the said point will be determined by Supreme Court in appropriate case, but so long as the judgment in the case of Deependra Yadav (*supra*) stands , it would amount to a settled legal position as a binding precedent on same principle of *stare decisis.* Considering the judgment of supreme court against the judgement of Andra Pradesh High Court and the judgment in the matter of Pushpendra Kumar Patel and the decision cited before me of the High Courts of Chhatisgarh and Rajasthan, suffice it to observe that legal position continues to be a little fluid in different states for it being dependent upon local rules framed for the said purpose in those states. The judgments of High Courts of other states are having persuasive value and may be having sound binding principle in the event there is any grey area, but looking to the judgment in the case of Deependra Yadav, which relied upon an earlier judgment of the same Court in Saurav Yadav (*supra*) decided by a three judge bench, and which also cited the judgment of Kishore Chaudhary (*supra*) with tacit approval, it can be held that the principles discussed in paragraph 31,32, and 33 stand to be a settled legal position even in the face of the order of the two judges' bench of the Supreme Court staying the judgment of Punjab and Haryana High Court in the matter of Haryana Public Service Commission v. Parmila and Another (*supra*). I am bound to follow the judgment of the three judges bench of the Supreme Court in the matter of Saurabh Yadav (*supra*), in which vide paragraph 61 following principle has been laid down:

"The open category is not a 'quota', but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria22, there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in Ajay Kumar v. State of UP23 and the Madhya Pradesh High Court in State of Madhya Pradesh & Anothers v. Uday Sisode, referred to in paragraph 20 of Justice Lalit's judgement], the result would be

confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore - perhaps unconsciously supports- but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.

46. The above principle has been discussed in the case of Deependra Yadav (*supra*) to form a view that there could not be a quota of open category candidates as unreserved category quota to bar entry of reserved category candidates even while they have scored better marks to match or for better performance to the general category candidate.

47. In the case of Deependra Yadav (supra), though Court discussed relevant rule, but if one goes to look into the principles and object behind those rules, as discussed prior to and after the amendment and then second time amendment, one would find that the position was that "firstly a list of candidate of unreserved category shall be prepared and this list will include candidate selected on the basis of another merit from Scheduled caste, Scheduled Tribes and Other Backward Caste who have taken any option/relocation given to the concerned category", but this position changed with amendment brought on 17th February, 2020 providing for separate list of candidates applied for unreserved , Scheduled Caste, Scheduled Tribes and Other Backward Caste and Economically Weaker Sections. However This rule further came to be re-amended on 26th March, 2021 restoring the position that was prior to first amendment. The controversy arose only on account of the first amendment rules being made applicable to the examination held during the interregnum period. The Courts were considering the effect of provisions from the point of view of preparation of preliminary examination results and the controversy centred around the principle as to whether reserved category candidates should be included in the unreserved category even at the stage of preliminary examination results. The Courts justified restoration of the old provision and so also given tacit approval to the judgment of division bench in Kishore Chaudhary applying the principle of reservation laid down in Saurabh Yadav (supra). Thus, even if the judgment in the case of Deependra Yadav was in connection with interpretation of local relevant rules, in principle it justified the old rules on the touchstone of Article 14 and 16 of the Constitution. Although I have discussed the above authorities to find a solution to the issue being agitated by the rival parties, but I will be failing in my duty if I do not refer to the division bench judgment of this Court in the case of **U.P. Power Corporation Ltd and Another v. Nitin Kumar and 9 Others being Special Appeal No. 310 of 2015 decided on 19.5.2015** cited before me. The intra-court appeal was filed by the U.P. Power Corporation Ltd. against the order of learned Single Judge wherein it was directed that short listing of the candidates even in respect of unreserved category should be by including merit holders of the reserved category at preliminary test stage as well and accordingly merit was directed to be re-drawn. The relevant paragraphs of the judgment are reproduced hereinbelow:

"Section 3 (6) is a statutory recognition of the principle that if a candidate belonging to a reserved category is selected on the basis of merit in open

competition with general candidates, such a candidate is to be adjusted not against the vacancies reserved for the reserved category to which the candidate belongs but against the unreserved seats. This proceeds on the foundation that where a candidate is meritorious enough to be placed within the zone of selected candidates independent of any claim of reservation and purely on the basis of the merit of the candidate, the candidate ought not to be relegated to a seat against the reserved category. The simple reason for this principle is that reservation is a process by which a certain number of posts or seats is carved out for stipulated categories such as OBC, Scheduled Castes and Scheduled Tribes. Unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit. Hence, the principle which is embodied in Section 3 (6) is not confined in its application only at the stage when the final select list is to be drawn up. If the submission of the appellants were to be accepted, that would result in seriously absurd consequences. As the learned Single Judge noted, in the present case itself, the petitioners who belong to the OBC category had in fact secured higher marks in the written test than the last short-listed candidate from the unreserved category. However, they were sought to be excluded from short-listing for the unreserved posts only on the ground that as a candidate who had declared himself or herself to be of a reserved category, that candidate would have to be excluded from shortlisting from the unreserved category even if on the basis of the position in merit, such a candidate would otherwise fall in the list of short-listed candidates in the open or unreserved category. Such a consequence would not be permissible in law.

The principle of law has been laid down in the judgment of the Supreme Court in Andhra Pradesh Public Service Commission vs. Baloji Badhavath2 in the following observations:

"One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well settled principle of law as has been laid down by this Court in several decisions. (See for example, Union of India v. Satya Prakash3, SCC Paras 18 to 20; Ritesh R. Shah v. Dr. Y.L. Yamul4, SCR at pp. 700-701 and Rajesh Kumar Daria v. Rajasthan Public Service Commission5, SCC para 9.)"

In a decision of a Division Bench of this Court in Sanjeev Kumar Singh vs. State of U.P.6, the Division Bench held that competition commences only at the stage where all the persons who fulfill the requisite conditions are short-listed. In that context, it was also held that a concession in fee or relaxation in the upper age limit are provisions not concerned with the process of selection. The Division Bench observed in para 53 as follows:

"In a selection which can be termed as open competition with general

category candidates, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds in the open competition with general category candidates, he would be placed amongst the general category candidates."

The judgment in Sanjeev Kumar Singh (supra) was followed by another Division Bench of this Court in Shiv Prakash Yadav vs. State of U.P.7 In that case, the learned Single Judge had held that once a reserved category candidate had exercised his option to be treated as a reserved category candidate, the provision of Section 3 (6) of the Act would not apply. This view was held to be erroneous in view of the judgment of the Division Bench in Sanjeev Kumar Singh's case (supra).

For these reasons, we are of the view that there was no error in the judgment of the learned Single Judge. The learned Single Judge has upheld the right of the appellants to carry out short-listing. However, the appellants have been faulted for having excluded candidates belonging to the reserved categories from the short-list of candidates for the unreserved posts which has resulted in a situation where candidates with higher marks failed to get short-listed for the unreserved posts merely because they belong to a reserved category. The view of the learned Single Judge and directions which have been issued consequently do not suffer from any error.″

(emphasis added)

48. The division bench judgment is equally binding upon me and no judgment has been cited of this Court or of the Supreme Court, which may have reversed the judgment of the division bench. The argument as to principle of "level playing field" to invite every category candidate to participate in the open competition would get frustrated if adequate representation of the reserved category candidates, as argued by Mr. Trivedi, does not impress the Court either. A candidate may have applied under reserved category but if he is not benefited by any relaxation other than the age and concession in fee at the preliminary examination result, then he can always enter unreserved category not only at the stage of final selection but at the same time when preliminary examination/screening test is held which may be only to shortlist candidates to find suitable candidates.

49. In my considered view whoever performs better/equal to a candidate of unreserved category would automatically fall in unreserved category, it being open to all as has been held in Saurav Yadav (*supra*), an earlier decision of Supreme Court to Deependra Yadav. There cannot be a bar to entry of such candidates even while holding preliminary examination/screening test. The open category means open and when it comes to be a matter of adequate representation qua reserved category candidates, if a reserved category candidates matching cut off marks of candidates of unreserved category candidate, are permitted to march to the unreserved category, then it will be more a case of level playing field to invite all equals to participate in open competition. One must not forget that equality before law and equal protection of laws means "likes to be treated alike" and hence whoever competes with the candidates of open category and falls within the cutoff of that category as may be prescribed, would constitute a class for limited purposes to

from suitable candidates' group within the meaning of Article 14 of the Constitution. Confining such a candidate to the reserved category only for the reason that list has been published category-wise, would definitely amount to discrimination.

50. On the point of changing rules of the game while selection is on and the point that petitioners having submitted to the advertisement, they could not have raised this issue, suffice it to observe that interpretation to Clause (14) of advertisement would not amount to changing the rules of the game. Even otherwise if legal position through common law judgments has already got crystallized, more especially in the circumstances when in State of U.P. there are no rules as such, this Court may, therefore, intervene to arrest any discrimination or arbitrariness at the end of selection body. Qualifying standard for final selection to migrate a candidate to unreserved category means he must not have been placed in reserved category for any relaxation other than age and fee cancessation this does not mean preparation of unreserved category list in preliminary examination would oust meritorious reserved category candidates and so also on the principle of law laid down by Supreme Court in Deependra Yadav (supra) and Division Bench judgment of this Court in the case of U.P. Power Corporation (supra). This would amount to discrimination as already observed in preceding paragraph.

51. However, I may hasten to add here that there is no rule framed as such in the State of U.P. for preparation of result by the selecting body by drawing list of unreserved category first bringing within its hold those reserved category candidates who have attained marks matching or above unreserved category candidates but it is a matter of interpretation of existing circulars and memorandum and the conditions given under advertisement, in consonance with principle and object behind reservation and of course, in the light of common law through judgments that have made this above principle of preparation list of suitable candidates permissible even in preliminary examination.

52. In view of above, all these petitions succeed and are allowed to the extent that respondent U.P. Public Service Commission shall re-draw the merit list of the preliminary examination result of suitable candidates to qualify for next stage of final examination for the purposes of selection and appointment against vacancies advertised vide advertisement No. A-3/E-1/2024 dated 10.4.2024 and thereafter only Commission shall be holding main examination on the basis of such revised preliminary examination result.

53. There will be no order as to cost.

(2025) 9 ILRA 379
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 14011 of 2025

Akhilesh Chauhan ...Petitioner
Versus
Chairman, U.P. Gramin Bank & Ors. ...Respondents

Counsel for the Petitioner:

Aditendra Singh, Vinod Kumar Singh, Indresh Kumar Singh

Counsel for the Respondents:
Ramesh Kumar Shukla

विचारणीय मुद्दा

1. जांचोपरान्त 'आन्तरिक परिवाद समिति' द्वारा की गई न्यूनतम प्रतिफल की अनुशंसा के उपरान्त सक्षम अधिकारी द्वारा दोबारा की गई नवीन विभागीय जांच में याचिकाकर्ता पर अधिरोपित अनिवार्य सेवानिवृत्ति के दण्डादेश की वैधानिकता। 2. सूत्रवाक्य 'जनरेलिया स्पेशलीबॅस नान डेरोगेण्ट' *(generalia specialibus non derogant)* का अनुप्रयोग।

सार-टिप्पणी (हेडनोट्स)

क. सेवा कानून दण्डादेश अनिवार्य सेवानिवृत्ति लैंगिक उत्पीडन का आरोप आन्तरिक परिवाद समिति द्वारा जांच पीड़िता और आरोपी याचिकाकर्ता की आपसी सहमति से तय किया गया कि व्यथित महिला और उसके परिवार द्वारा कोई भी बाहरी जाएगी, बशर्ते आंतरिक जांच जारी रखी जाएगी याचिकाकर्ता ने क्षमा मांगा परिवाद समिति न्यूनतम प्रतिफल की अनुशंसा की गई इसके इसके उपरान्त सक्षम अधिकारी द्वारा दोबारा की जांच आख्या दिनांकित 23.12.2024 प्रस्तुत की कार्यवाही या आपराधिक कार्यवाही नहीं की और याचिकाकर्ता पीड़िता से क्षमा मांगेगा की जांच आख्या दिनांकित 17.12.2023 में विरुद्ध कोई अपील नहीं दाखिल की गई गई विभागीय जांच में जांच अधिकारी द्वारा गई, जिसमें याचिकाकर्ता पर आरोप सिद्ध पाया गया अनिवार्य सेवानिवृत्ति का दण्डादेश पारित - वैधानिकता को चुनौती दी गई :

अभिनिर्धारित : नियोक्ता बैंक द्वारा 'आंतरिक परिवाद समिति' की जांच आख्या के उपरान्त, नवीन रूप से अनुशासनात्मक कार्यवाही करने की कोई आवश्यकता नहीं थी। परन्तु जब अनुशासनात्मक कार्यवाही का निष्कर्ष भी आरोपित आरोप को सत्य मानता है व उपलब्ध सामग्री के आधार पर भी आरोप सिद्ध हुआ है कि याचिकाकर्ता ने लैंगिक उत्पीड़न का कदाचार कारित किया तो न्यायालय का मत है कि उक्त अनुशासनात्मक कार्यवाही 'अनियमित' हो सकती है, परन्तु 'अविधिक' नहीं हो सकती है, क्योंकि अन्ततः 'आंतरिक परिवाद समिति' का निष्कर्ष और अनुशासनात्मक कार्यवाही का निष्कर्ष समान है चूंकि अनुशासनात्मक प्राधिकारी ने आंतरिक परिवाद समिति की दण्ड के लिए की गयी अनुशंसा का संज्ञान नहीं लिया था और इस कारण से न्यूनतम प्रतिफल का अर्थ, अर्थात न्यूनतम दण्ड देने के विषय पर विचार ही नहीं किया गया। अतः इस स्तर पर दण्डादेश का निर्णय, विधिविरूद्ध हो जाता है। (पैरा 20 एवं 21)

ख. विधि निर्वचन विशिष्ट विधि एवं सामान्य विधि के मध्यम अन्तर्विरोध 'जनरेलिया स्पेशलीबॅस नान डेरोगेण्ट' *(generalia specialibus non derogant)* **अनुप्रयोग** :

अभिनिर्धारित : 'विशेष अधिनियम' के उपबन्ध सामान्यतः 'सामान्य अधिनियम' के उपबन्धों पर प्रबल होंगे एवं अधिनियम 2013 की धारा 28 के अनुसार इस अधिनियम के उपबंध तत्समय प्रवृत्त किसी अन्य विधि के उपबंध के अतिरिक्त होंगे न कि अल्पीकरण में 'विनियम 2010' बैंक द्वारा आंतरिक विषयों पर लागू विनियम है इस कारण से भी 'अधिनियम 2013' के उपबंध बैंक पर पूर्ण रूप से लागू है और बाध्यकारी है एवं 'विनियम 2010' के उपबंधों पर प्रबल है। (पैरा 23) उद्धृत निर्णयविधि (केस लॉ)

मेधा कोतवाल लेले एवं अन्य बनाम् यूनियन आफ इण्डिया एवं अन्य, (2003) 1 एस. सी. सी. 297; औरेलियानो फर्नान्डिज बनाम् स्टेट आफ गोआ एवं अन्य, (2024) 1 एस. सी. सी. 632; प्रदीप मंडल बनाम् यूनियन आफ इण्डिया एवं अन्य, 2016 (4) सी. एच. एन. (सी. ए. एल.) 118; विशाखा व अन्य बनाम् राजस्थान सरकार व अन्य, (1997) 6 एस. सी. सी. 241 संदर्भित ।

अन्तर्निहित कानून

महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध और प्रतितोष) अधिनियम, आर्यावर्त बैंक (अधिकारियों और कर्मचारियों) 2013 धारा 4, 9, 10, 13 (13) (i) एवं 18 सेवा विनियम, 2010 विनियम 18, 38 एवं 39

मूल-शब्द (कीवर्ड) की सूची

लैंगिक उत्पीड़न; जांच प्रतिवेदन रिपोर्ट; न्यूनतम प्रतिफल; अनुशंसा; आंतरिक परिवाद समिति; अवांछनीय आचरण; क्षमाः व्यथित महिला; जांच आख्या; अभियोग के तथ्य अभियोग के समर्थन में आरोपों का विवरण; कदाचार; धोखा, लैंगिक अनुगमनः विभागीय जांच कार्यवाही; नैसर्गिक न्यायः बचाव का समुचित अवसरः आरोप पत्रित अधिकारी;

शिकायतकर्ताः दूरभाष वार्तालाप; दण्कॉ रिकार्डिंग;; अपील; आरंभ से ही शून्य अनुशासनात्मक; दण्डादेशः अनिवार्य सेवानिवृत्तिः वृहद शास्ति; अल्पीकरण।

मामले का उद्भव

सक्षम अधिकारी द्वारा पारित आदेश दिनांक 15.07.2025, जिसके द्वारा अनिवार्य सेवानिवृत्ति का दण्डादेश अधिरोपित किया गया, और अपीलीय प्राधिकारी द्वारा पारित आदेश दिनांक 11. 08.2025, जिसके द्वारा आदेश दिनांक 15.07.2025 के विरुद्ध अपील निरस्त की गई।

पक्षकारों की ओर से उपस्थिति

याचिकाकर्ता के अधिवक्ता: अदितेन्द्र सिंह, विनोद कुमार सिंह, इंद्रेश कुमार सिंह।

विपक्षीगण के अधिवक्ता: रमेश कुमार शुक्ला ।

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

प्रस्तावना

१. वर्तमान प्रकरण के तथ्यों व परिस्थितियों के संदर्भ में इस न्यायालय के समक्ष निम्नलिखित विधिक विषय विचारार्थ हैः-

"महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध और प्रतितोष) अधिनियम, २०१३ (संक्षेप में 'अधिनियम, २०१३') की धारा १३ के उपबंधों के अंतर्गत 'आंतरिक परिवाद समिति' के द्वारा वर्तमान प्रकरण के संदर्भ में उपलब्ध कराई गई 'जांच प्रतिवेदन रिपोर्ट' के निष्कर्ष कि 'सभी साक्ष्यों व बयानों के आधार पर यह घटना सत्य प्रतीत होती है' और प्रत्यार्थी के विरुद्ध नियोजक को 'नियमानुसार न्यूनतम प्रतिफल की संस्तुति' की अनुशंसा की गई है, तब 'अधिनियम, २०१३' की धारा १३(३) (i) के अनुसार, प्रयोज्य सेवा नियमों के उपबंधों के अंतर्गत लैंगिक उत्पीड़न के 'कदाचार' के लिए प्रत्यार्थी के विरूद्ध कार्यवाही करने की विधिक प्रक्रिया क्या होगी?"

तथ्यात्मक प्रारूप

२. याचिकाकर्ता, शाखा प्रबंधक, उत्तर प्रदेश ग्रामीण बैंक के विरूद्ध एक व्यथित महिला (कार्यालय कर्मचारी) ने एक 'लैंगिक उत्पीड़न परिवाद पत्र' दिनांकित १८.१२.२०२३, बैंक के 'महिला कल्याण समिति' (परिवाद समिति) को 'अधिनियम २०१३' की धारा ९ के अंतर्गत प्रेषित किया, कि याचिकाकर्ता ने १६.१२.२०२३ को उसके साथ, उसके निवास पर लैंगिक प्रकृति का अवांछनीय आचरण करने का प्रयास किया, जिसके कारण वह अति भयभीत एवं व्याकुल रही। परिवाद पत्र में अवांछनीय आचरण का संक्षिप्त विवरण भी दिया गया।

३. उपरोक्त 'लैंगिक उत्पीड़न परिवाद पत्र' पर बैंक के क्षेत्रीय प्रबंधक के आदेशानुसार 'अधिनियम, २०१३' की धारा ४ के उपबंधों के अंतर्गत गठित 'आंतरिक परिवाद समिति' को उक्त परिवाद अग्रिम कार्यवाही के लिए प्रेषित किया। 'अधिनियम, २०१३' की धारा १० के अनुसार व्यथित महिला के अनुरोध पर दोनों पक्षों ने बैंक और कर्मचारियों की छवि को सुरक्षित रखने हेतु, उपबोधन के तहत, आपसी सहमति से तय किया, कि व्यथित महिला व उसके परिवार द्वारा कोई भी बाहरी कार्यवाही, मीडिया द्वारा, एवं पुलिस द्वारा नहीं की जायेगी व प्रथम सूचना रिपोर्ट भी नहीं करी जाएगी, बशर्ते 'आंतरिक परिवाद समिति' (आई.सी.सी.) द्वारा आंतरिक जांच जारी रखी जाएगी और याचिकाकर्ता सभी क्षेत्रीय कार्यालय कर्मचारियों के समक्ष व्यथित महिला से अपने कृत्य की क्षमा मांगेंगे, जो उसने मांगी भी। आपसी समझौते की एक प्रति, 'आंतरिक परिवाद समिति' की कार्यवाही के अभिलेखों पर सुरक्षित रखी गई।

४. 'आंतरिक परिवाद समिति' ने नियमानुसार, परिवाद की जाँच की प्रक्रिया, नैसर्गिक सिद्धान्तों के सभी नियमों का पालन करते हुए सम्पूर्ण करी। व्यथित महिला ने अपना विस्तृत लिखित कथन अभिलिखित कराया। साथ ही साथ बैंक की कार्यालय सहायक व सहायक प्रबंधिका के कथन भी गवाहो के रूप में अभिलिखित किये गये तथा दोनो पक्षों के वाट्सएप पर वार्तालाप का स्नैप शाट व कॉल रिकार्ड के दस्तावेज भी कार्यवाही के अभिलेखों पर सुरक्षित कराये गये और अन्ततः

एक जाँच आख्या, दिनांकित २७.१२.२०२३, क्षेत्रीय प्रबंधक को प्रेषित की गयी, जिसके प्रमुख अंश निम्न हैः-

"समिति द्वारा दोनों पक्षों व समबंधित स्टाफ के बयानों को धैर्यपूर्वक सुना गया। समिति के अनुसार दोनों ही पक्षो को मालूम था कि घर पर कोई नहीं है और ऐसे में बंद घर के अंदर जाने वाली परिस्थित को टाला जा सकता था | अंदर जाने के पश्चात सुश्री नेहा रानी की उनकी सहकर्मी सुश्री मोनिषा से निरंतर व्हाट्सअप के माध्यम से बात हो रही थी जिसमें वह अपनी परिस्थितियों का विवरण उन्हें दे रही थी। सुश्री नेहा रानी व सुश्री मोनिषा की बातों से ऐसा प्रतीत होता है कि सुश्री नेहा रानी असहज महसूस कर रही थी और अत्यधिक प्रतिक्रिया न करने के कारण वह तुरंत वहाँ से नहीं निकाल पायी।

समस्त बयान व साक्ष्यों का समिति द्वारा सावधानी से आंकलन किया गया है व दोनों पक्षों के कथन, कॉल रिकॉर्डिंग एवं अन्य तथ्यों से यह प्रतीत होता है कि सुश्री नेहा रानी को घर के अंदर जाने से पूर्व मालूम था कि घर के अंदर कोई नहीं है एवं घर पर हुई बातचीत के संदर्भ में श्री अखिलेश चौहान दवारा फोन एवं क्षेत्रीय कार्यालय के समस्त स्टाफ के सामने माफ़ी मांगी गई है। सुश्री नेहा रानी व् श्री अखिलेश चौहान के बीच पहले से किसी भी प्रकार के मतभेद नहीं थे जिसकी पुष्टि दोनों पक्षों ने की है। हालांकि यह घटना पर दोनों ही पक्षों के विचार मेल नहीं खाते हैं। चूंकि घटना के समय केवल श्री अखिलेश चौहान एवं कुमारी नेहा रानी ही घर पर मौजूद थे इसलिए घटना से संबन्धित कोई भी ठोस साक्ष्य उपलब्ध नहीं है। सभी साक्ष्यों व बयानों के आधार पर यह घटना सत्य प्रतीत होती है। श्री अखिलेश चौहान की अब तक की साफ छवि को देखते हुये व उनके द्वारा उनके कृत्य के प्रति माफी मांगने के उपरांत समिति श्री अखिलेश चौहान के लिए बैंक नियमनुसार न्यूनतम प्रतिफल की संस्तुति करती है।"

(रेखांकित भाग पर विशेष बल दिया गया)

५. अविवादित रूप से याचिकाकर्ता ने 'आंतरिक परिवाद समिति' की जाँच आख्या, दिनांकित २७.१२.२०२३, के निष्कर्ष व की गई अनुशंसा के विरूद्ध 'अधिनियम २०१३' की धारा १८ के उपबंध के अंतर्गत कोई अपील दाखिल नहीं करी और न ही, उक्त जाँच आख्या को आक्षेपित ही किया अर्थात उक्त जाँच आख्या के निर्णय व अनुशंसा को याचिकाकर्ता ने स्वीकार कर लिया।

६. वर्तमान के प्रकरण में प्रथम तिथि में सुनवाई के दौरान न्यायालय की टिप्पणियों को ध्यान में रखते हुए, अगली तिथि पर सुनवाई के दौरान, याचिकाकर्ता के विद्वान अधिवक्ता द्वारा मौखिक रूप से उपरोक्त जाँच आख्या को वर्तमान याचिका में आक्षेपित करने की चेष्टा/प्रार्थना, इस न्यायालय द्वारा स्पष्ट रूप से अस्वीकार कर दी गयी थी।

७. उपरोक्त पृष्टभूमि में बैंक के सक्षम प्राधिकारी ने याचिकाकर्ता को एक ज्ञापन (Memorandum) दिनांकित २०.०२.२०२४ को तामील कराया, कि उसके विरूद्ध आर्यावर्त बैंक (अधिकारियों और कर्मचारियों) सेवा विनियम, २०१० (संक्षेप में 'विनियमावली - २०१०') के विनियम ३९ के प्रावधानो के अंतर्गत उसके द्वारा किये गये 'कदाचार' के लिए शास्तियां आरोपित करने हेतु कार्यवाही प्रारम्भ करी गयी है और ज्ञापन के साथ अभियोग के तथ्य (Article of charges) व अभियोग के समर्थन में आरोपों का विवरण (Statement of allegations in support of Article of charges) भी संलग्न किये गये। यह भी स्पष्ट रूप से कथन किया गया कि उसनें 'विनियमावली, २०१०' के विनियम संख्या १८ व ३८ से संदर्भ में 'कदाचार' का कृत्य कारित किया है। अभियोग संख्या १ के अनुसार याचिकाकर्ता (आरोपी) व्यथित महिलाकर्मी को १७.१२.२०२३ को धोखे से अपने साथ अपने घर ले गये। अपने घर पहुचने के उपरान्त किसी न किसी बहाने से व्यथित महिलाकर्मी को अपने घर पर रोका और इसी दरम्यान उसने व्यथित महिलाकर्मी के ऊपर अपना हाथ उसकी अनुमति के बिना रखकर, उसके साथ लैंगिक अनुगमन करने का प्रयास किया।

८. 'विनियमावली २०१०' के संदर्भित विनियम संख्या १८,३८ व ३९ निम्न उद्दीर्णित किये जा रहे हैः-

"१८. विनियम और आदेशों का पालन करने का दायित्व- *प्रत्येक अधिकारी या कर्मचारी इन*

विनियमों का पालन करने को सुनिश्चित करेगा और जो ऐसे व्यक्ति या व्यक्तियों के द्वारा समय-समय पर उसे सभी आदेशों और निर्देशों का पालन, अनुपालन और आदर करेगा जो उसे दिए जाएं जिनकी अधिकारिता, अधीक्षण या नियंत्रण के अधीन वह तत्समय तैनात है।"

***"३८. यौन उत्पीडन** - कोई अधिकारी या कर्मचारी कार्यस्थल पर कोई ऐसा कार्य नहीं करेगा जो किसी स्त्री के यौन उत्पीड़न की कोटि में आता हो ।*

***स्पष्टीकरण** - इस विनियम के प्रयोजनों के लिए "यौन उत्पीड़न" के अंतर्गत प्रत्यक्ष रूप से या अप्रत्यक्ष रूप से निम्नलिखित अवांछनीय लैंगिक रूप से कामुक व्यवहार भी है-*

(क) शारीरिक स्पर्श और पहल;

(ख) यौन चाह की मांग या अनुरोधः

(ग) यौन रंजित अभयुक्तियां;

(घ) कोई अश्लील साहित्य दिखाना; या

(ङ) अवांछनीय शारीरिक, मौखिक या गैर-मौखिक यौन प्रकृति का आचरण।

***३९. शास्तियां**-इस अध्याय के पूर्वगामी विनियमों पर प्रतिकूल प्रभाव डाले बिना कोई ऐसा अधिकारी या कर्मचारी जो इन विनियमों को भंग करता है या जो उपेक्षा, अदक्षता या निष्क्रियता प्रदर्शित करता है या जो ऐसे कृत्य करता है जो बैंक के हितों के लिए हानिकारक हैं या उसके अनुदेशों के विरोध में है या जो अनुशासन भंग करता है अथवा कदाचार के किसी अन्य कृत्य का दोषी है, निम्नलिखित में से किसी एक या अधिक शास्तियों का दायी होगा, अर्थातः-*

१. अधिकारी:

(क) छोटी शास्तियां:

(i) परिनंदा करना;

(ii) संचयी प्रभाव के बिना वेतनवृद्धि विधारित करना या रोकनाः

(iii) पदोन्नति रोकना;

(iv) उपेक्षा या आदेश भंग द्वारा बैंक को हुई किसी संपूर्ण धनीय हानि या उसके भाग का उपलब्धियों या ऐसे अन्य रकमी से वसूली जो उसके प्रति शोध्य है।

(v) संचयी प्रभाव के बिना दो वर्ष से अनधिक की अवधि के लिए समय वेतनमान के निम्नतर प्रक्रम तक घटाना।

(ख) मुख्य शास्तियां:

(१) विनियम ३९ के उपविनियम (१) के खंड (क) की मद (v) में यथा उपबंधित के सिवाय किसी विनिर्दिष्ट अवधि के लिए समय वेतनमान में इस बारे में और निर्देशों सहित निम्नतर प्रक्रम तक कमी कि क्या अधिकारी ऐसी कमी की अवधि के दौरान वेतन वृद्धियां उपार्जित करेगा या नहीं और क्या ऐसी अवधि की समाप्ति पर कमी का उसके वेतन की भावी वृद्धियों को स्थगित करने का प्रभाव होगा या नहीं होगा;

(ii) निम्नतर ग्रेड या पद में कमी;

(iii) अनिवार्य सेवा निवृत्ति;

(iv) सेवा से हटाया जाना जो भावी नियोजन के लिए निरर्हता नहीं होगी;

(v) पदच्युति जो सामान्यतः भावी नियोजन के लिए निरर्हता होगी।

***स्पष्टीकरण-** इस विनियम के प्रयोजनों के लिए, निम्नलिखित बातें शास्ति की कोटि में नहीं आएंगी, अर्थातः-*

(i) किसी अधिकारी की, उस पद की नियुक्ति के निबंधनानुसार, जो उसने धारण किया है, विभागीय परीक्षण या परीक्षा उत्तीर्ण करने में उसकी असफलता के कारण उसकी एक या अधिक वेतनवृद्धि को रोकना;

(ii) दक्षतारोध पार करने की अनुपयुक्तता के आधार पर किसी अधिकारी के समय वेतनमान में उसकी दक्षतारोध पर वेतनवृद्धियों को रोकना;

(iii) किसी अधिकारी का उस उच्चतर ग्रेड पद के लिए स्थानापन्न कर्तव्यभार न देना या प्रोन्नति न करना, जिसके लिए वह विचार करने हेतु पात्र हो सकेगा किंतु उसके लिए उसके मामले पर विचार करने के पश्चात् वह अनुपयुक्त पाया जाता है;

(iv) प्रोन्नति के लिए कतिपय अपेक्षा के पूरा न होने या अनुशासनिक कार्यवाहियों के लंबित रहने जैसे कारणों के लिए किसी अधिकारी की प्रोन्नति को रोकना या स्थगित करना;

(v) उच्चतर ग्रेड या पद पर स्थानापन्न किसी अधिकारी का इस आधार पर कि उसे विचारण के पश्चात् या उसके आचरण से असंबद्ध प्रशासनिक आधारों पर ऐसे उच्चतर ग्रेड या पद के लिए अनुपयुक्त समझा गया, निम्नतर ग्रेड या पद पर प्रत्यावर्तन;

(vi) परिवीक्षा की अवधि के दौरान या उसके अंत में किसी अन्य ग्रेड या पद के लिए परिवीक्षा पर 'नियुक्त किसी अधिकारी का, उसकी नियुक्ति के निबंधनों, या नियमों अथवा ऐसी परिवीक्षा को शासित करने वाले आदेशों के अनुसार पूर्व ग्रेड या पद पर प्रत्यावर्तन;

(vii) प्रतिनियुक्ति पर किसी अधिकारी का उसके मूल संगठन में प्रत्यावर्तन;

(viii) किसी अधिकारी की सेवा की समाप्तिः-

(क) किसी संविदा या करार के अधीन से अन्यथा अस्थायी हैसियत में नियुक्त उस अवधि की समाप्ति पर, जिसके लिए उसे नियुक्त किया गया या उससे पूर्व उसकी नियुक्ति के निबंधनों के अनुसार;

(ख) किसी संविदा या करार के अधीन नियुक्ति, ऐसी संविदा या करार के निबंधनों के अनुसार;

(ग) छंटनी के भाग रूप में,

परंतु विनियम ३९ के उप विनियम (१) के खंड (क) की मद (१) से मद (v) में यथा विनिर्दिष्ट छोटी शास्तियां सक्षम प्राधिकारी द्वारा तब तक अधिरोपित नहीं की जाएंगी जब तक अधिकारी को लिखित में निम्नलिखित सूचना नहीं दे दी जाती –

(i) उसे उन आधारों की सूचना देना जिसके आधार पर उसने उक्त शास्तियों के अधिरोपण का प्रस्ताव किया है;

(ii) उसे सूचना की प्राप्ति की तारीख से १५ दिन की अवधि के भीतर लिखित में प्रतिरक्षा का कथन तैयार करने के लिए युक्तियुक्त अवसर देना और अधिकारी द्वारा प्रस्तुत प्रतिरक्षा के कथन, यदि कोई हो, पर सुनवाई के पश्चात् विचार किया जाएगाः

परंतु यह कि ऊपर विनिर्दिष्ट प्रमुख शास्तियों में से किसी शास्ति के अधिरोपण का कोई आदेश सक्षम प्राधिकारी द्वारा लिखित रूप में हस्ताक्षरित किसी आदेश के सिवाय, नहीं किया जाएगा और लिखित में आरोप या आरोपों को विरचित किए बिना और अधिकारी को दिए बिना और इस जांच के किए बिना कि उसके पास आरोप या आरोपों का उत्तर देने और स्वयं की प्रतिरक्षा का युक्तियुक्त अवसर रहे, ऐसा कोई आदेश पारित नहीं किया जाएगा।

परंतु यह और कि कोई जांच नहीं की जाएगी, यदि-

(i) यदि ऐसे मामलों में कदाचार साबित हो जाता है, बैंक का हटाए जाने या पदच्युति का दंड अधिरोपित करने का आशय नहीं है; और

(ii) बैंक ने अधिकारी को कारण बताओं सूचना जारी की है जिसमें उसे कंदाचार और उस दंड की सूचना दी गई है जिसका वह ऐसे कदाचार के लिए दायी हो सकेगा; और

(iii) अधिकारी ने पूर्वोक्त कारण बताओ सूचना के अपने जवाब में स्वयं के दोष को स्वेच्छा से स्वीकार कर लिया है; "

९. विभागीय जांच कार्यवाही में ११ प्रबंधन प्रदर्श व ५ बचाव प्रदर्श प्रस्तुत किये गये। ३ प्रबंधक गवाह व २ बचाव गवाहों के साक्ष्य भी अभिलिखित करे गये। इसकी के साथ बैंक मित्र, आरोप पत्रित अधिकारी व शिकायतकर्ता के कथन भी अभिलिखित करे गये।, जाँच अधिकारी ने जांच आख्या दिनांकित २३.१२.२०२४, महाप्रबंधक एवं सक्षम प्राधिकारी, आर्यावर्त बैंक, प्रधान कार्यालय, लखनऊ को प्रेषित करी और यह निर्णीत कियाः-

"उपरोक्त के आलोक में संभाव्यता की प्रबलता के आधार पर आरोप पत्रित अधिकारी पर आर्टिकल-१ के माध्यम से अधिरोपित आरोप सिद्ध होते है।"

१०. उपरोक्त वर्णित जांच आख्या में जांच अधिकारी का निष्कर्ष निम्नलिखित हैः-

"*जांच कार्यवाही में प्रस्तुत साक्ष्यों एवं गवाहों के परिशीलन एवं प्रस्तुतकर्ता अधिकारी की आख्या एवं उस पर आरोप पत्रित अधिकारी द्वारा प्रस्तुत बचाव अभिकथन के आधार पर जांच अधिकारी का निष्कर्ष निम्नवत हैः-*

श्री उबैश (DW-२) द्वारा ICC के समक्ष (Mex-९ में विडिओं स्टेटमेंट है) एवं जांच कार्यवाही (Daily Order sheet – ६ के पृष्ठ सं-४) में यह बताया कि मैनेजर सर द्वारा १६.१२.२०२३ को सुबह लगभग १०.३० बजे (समय की पुष्टि Dex-२ से की जाती है) पर काल कर के कहा कि कब तक आना है तो उनके (DW-२) द्वारा बताया गया कि उनके पिता जी अस्वस्त हैं एवं उन्हें डॉक्टर को दिखाना पड़ सकता है। इसलिए वह १५-२० मिनट में यह कन्फर्म करेंगे कि वह वसूली हेतु आ पाएंगे अथवा नहीं और उसके बाद DW-२ द्वारा फोन कर समय कन्फर्म नहीं किया जा सका। DW-२ द्वारा यह भी बताया गया कि आरोप पत्रित अधिकारी द्वारा उन्हें ११:३० बजे कॉल किया गया था किन्तु यह फोन उठा नहीं पाए, बाद में उन्होने (DW-२ ने) १२.१५-१२.३० बजे आरोप पत्रित अधिकारी को बता दिया था कि वो पिता जी को दिखाने ले गए हैं तथा वसूली पर नहीं आ पाएंगे। अतः आरोप पत्रित अधिकारी का कथन कि बैंक मित्र श्री उबैश द्वारा ICC के समक्ष दिए गये बयान MEX६(२०) तथा Daily order sheet-६ के पृष्ठ सं०-४ के अंत में EO के समक्ष यह बयान दिया गया है कि श्री उबैश द्वारा १५-२० मिनट्स के विलम्ब होने की जानकारी आरोप पत्रित अधिकारी को फोन के माध्यम से दी गयी थी, असत्य है। साथ ही उल्लेखनीय है कि जिस ११.३० बजे की काल की बात DW-२ कर रहा है वह आरोप पत्रित अधिकारी द्वारा दिए गए काल रेकार्डस (Dex-२) में कहीं भी दिख नहीं रही है। साथ ही श्री राम बाबू द्वारा ICC के समक्ष (Mex-९ में विडिओ स्टेटमन्ट है) अपने बयान में स्पष्ट रूप से कहा है कि मैने सर और उनके मध्य वसूली पर चलने हेतु १-१.१५ बजे से पहले कोई बात नहीं हुई थी एवं वह डाक्टर के यह अपने बेटे का प्लास्टर कटवाने गए थे, उनके द्वारा १५-२० मिनट में आने जैसी कोई बात नहीं कही गई थी। साथ ही Dex-२ के अवलोकन से स्पष्ट है कि आरोप पत्रित अधिकारी द्वारा श्री उबैश को सुबह १०:३४ पर कॉल कर वसूली हेतु आने का समय पूछा गया था तथा सुबह १०:३८ पर एक आउटगोइंग कॉल (जिसका विवरण जांच कार्यवाही में नहीं प्रस्तुत किया गया है) श्री रामबाबू के नंबर पर भी दिख रहा है (किन्तु श्री राम बाबू द्वारा उस कॉल की पुष्टि नहीं की गई है), तथापि इन दोनों कॉल से पूर्व ही शिकायतकर्ता को सुबह १०:३१ पर कॉल कर वसूली का समय कन्फर्म कर दिया गया था। उपरोक्त साक्ष्यों एवं गवाहों से स्पष्ट है कि आरोप

पत्रित अधिकारी का बयान एवं वसूली पर जाने वाले अन्य ०२ सदस्यों (श्री उवेश पूर्व श्री रामबाबू) के बयानों मे विरोधाभास है तथा आरोप पत्रित अधिकारी द्वारा शिकायतकर्ता को अन्य सदस्यों के १५-२० मिनट्स में आने की बात के संबंध में असत्य जानकारी देकर अपने घर इंतज़ार हेतु लगभग ०२ घंटे बैठाया गया।

शिकायतकर्ता के कंधे पर हाथ रखने का कोई सीधा साक्ष्य / गवाह जांच कार्यवाही में प्रस्तुत नहीं किया गया है. किन्तु कई महत्वपूर्ण साक्ष्य एवं गवाह जैसे MW-२ एवं शिकायतकर्ता की चैट (Mex -१०) Mex-११ (शिकायतकर्ता एवं आरोप पत्रित अधिकारी के मध्य की कॉल रिकॉर्डिंग) एवं आरोप पत्रित अधिकारी के बयानों में दिख रहे विरोधाभास (जैसे बैंक मित्र एवं रामबाबू से वसूली श्री हेतु तय समय श्री रामबाबू के ना आने का कारण कि बेटे को दिखाना था श्री अथवा पड़ोस में किसी की मृत्यु हो गई थी ICC के समक्ष दिए गए बयान में आरोप पत्रित अधिकारी द्वारा बताया गया कि उनके द्वारा शिकायतकर्ता को पहले ही फोन करके बताया गया था कि अभी समय लग रहा है जिस पर शिकायतकर्ता द्वारा ही कहा गया कि यहाँ पर कहा खड़े रहेंगे, तो वो उसे अपने घर ले गए, जबकि Dex -२ के अवलोकन से स्पष्ट है कि आरोप पत्रित अधिकारी द्वारा १०:३१ बजे कॉल करके शिकायतकर्ता को वसूली पर आने हेतु कहने के पश्चात कोई कॉल नहीं की गई है जबकि उनको बैंक मित्र द्वारा आने हेतु अस्पष्टता १०:३४ पर बता दी गई थी, इसके बाद शिकायतकर्ता द्वारा कमालगंज पहुंचने के पश्चात ११:०१ बजे स्वयं आरोप पत्रित अधिकारी को की गई थी; ICC के समक्ष दिए गए बयान में आरोप पत्रित अधिकारी द्वारा शिकायतकर्ता को घर दिखाने के संबंध में मना करना और कहना कि उनकी बैठक से उनका पूरा घर दिखता है जबकि शिकायतकर्ता को स्पष्ट रूप से पता है कि उनके घर में पढाई सम्बन्धी नोट टैग आदि लगे हुए है तथा ICC की एक सदस्या द्वारा भी कहा गया कि आरोप पत्रित अधिकारी द्वारा क्षेत्रीय प्रबंधक के केबिन में बताया गया था कि उसके शिकायतकर्ता को घर दिखाने की बात कही थी, तथा DW-३ द्वारा इस बात की पुष्टि भी की गई कि उनकी बैठक से किचन और पूजा घर दिखते है, आरोप पत्रित अधिकारी द्वारा अपने बयान में कहा गया कि शिकायतकर्ता लगभग पौन घंटे उनके घर रूकी थी जबकि शिकायतकर्ता द्वारा लगभग ०२ घंटे वसूली पर जाने हेतु इंतजार किया गया। ICC के समक्ष दिए गए बयान में आरोप पत्रित अधिकारी द्वारा कहा गया कि देर होने पर शिकायतकर्ता द्वारा मार्केट की जाने लगी तो उनके द्वारा बैंक मित्र एवं रामबाबू को कॉल किया गया और दोनों ने ही बताया कि अभी देर लगेगी जबकि बैंक मित्र के बयान से स्पष्ट है कि सुबह १०:३४ पर बात होने के पश्चात उसकी बात आरोप पत्रित अधिकारी से नहीं हो पाई थी एवं जब १२:१५-१२:३० बजे लगभग हुई तो उसने स्पष्ट तौर पर आने से मना कर दिया था साथ ही श्री रामबाबू ने तो ०१:१५ बजे से पहले आरोप पत्रित अधिकारी से किसी भी संपर्क को स्वीकार नहीं किया है), आदि के आधार पर शिकायतकर्ता की शिकायत को बल मिलता है एवं संभाव्यता की प्रबलता पर यह आरोप सिद्ध होता है कि आरोप पत्रित अधिकारी द्वारा शिकायतकर्ता को बहाने से अपने घर रोक कर रखा गया एवं उसकी अनुमति के बिना उसके कंधे पर हाथ रखने की कोशिश की गई एवं असहज महसूस कराया गया । यहाँ उल्लेखनीय है कि शिकायतकर्ता द्वारा जब १६.१२.२०२३ को ०३ बजे के लगभग कॉल कर के घटना के संबंध में आरोप पत्रित अधिकारी से अत्यंत तेज आवाज में सवाल जवाब किया गया एवं उसके कृत्य के संबंध में शिकायत की गई तो आरोप पत्रित अधिकारी द्वारा मात्र Sorry एवं Extremely Sorry जैसे शब्दो का प्रयोग किया गया तथा आरोप पत्रित अधिकारी का कहना कि उसने वसूली पर बुलाने हेतु सॉरी कहा है मानने योग्य नहीं है, क्योकि शिकायतकर्ता द्वारा काल पर आरोप पत्रित अधिकारी को बहुत कुछ कहा गया कि सर देखिए लड़की आपकी भी है और ये चीज आपको भी पता है कि आपके विहेव्यर कैसा था कैसा नहीं था, आप भी एक पिता है आपको थोडा रीस्पानसबल होना चाहिए, जब आपने वसूली पर बुलाया था तो आपको वसूली पर ही लेकर चलना चाहिए था, आपको कम से कम अपने मैनेजर होने का रीस्पेक्ट करना चाहिए आपको किस चीज से लगा कि मै interested हूँ या हिंट भी दे रही हूँ, आपको नहीं लगा कि आपका विहैव बहुत घटिया था आज का, आपको क्या लगा कि मैं किसी को कुछ भी बोलूंगी नहीं, भगवान ना करे कोई कभी आपकी लड़की के साथ ये सब करे पर बहुत टार्चरस होती है ये चीजे महीनो तक हान्ट करती है, आदि तब पर भी आरोप पत्रित अधिकारी द्वारा काल पर बार बार सिर्फ माफी ही मांगी जाती

रही, यहाँ यह मानने योग्य नहीं है कि आरोप पत्रित अधिकारी को शिकायतकर्ता की आवाज सुनाई नहीं दे रही थी एवं वह सगे संबंधियों में बैठे होने के कारण बार बार माफी मांग रहे थे।

आरोप पत्रित अधिकारी का कथन की घर से निकलने के पश्चात शिकायतकर्ता सहजता से उसके साथ बाइक पर बैठ कर बाहर गई तथा उसका घर १००-१५० मीटर की दूरी पर था टेम्पो स्टेन्ड के संदर्भ में उल्लेखनीय है कि शिकायतकर्ता अधिकारी द्वारा बार बार कहा गया है कि उसे टेम्पो स्टेन्ड से आरोप पत्रित अधिकारी के घर का रास्ता उसे नहीं ज्ञात था, अतः आरोप पत्रित अधिकारी के साथ वापस आने से आरोपी के खंडन को कोई बल नहीं मिलता है।

आरोपी पत्रित अधिकारी का कथन की शिकायतकर्ता उसके प्रति पूर्वाग्रह से ग्रसित थी के संदर्भ में आरोप पत्रित अधिकारी द्वारा Mex-१० को उदभूत किया है, जो की पूर्वाग्रह को साबित करने हेतु पर्याप्त नहीं है।

उपरोक्त के आलोक में संभाव्यता की प्रबलता के आधार पर आरोप पत्रित अधिकारी पर आर्टिकल-१ के माध्यम से अधिरोपित आरोप सिद्ध होते है।"

(रेखांकित भाग पर विशेष बल दिया गया)

११. सक्षम अधिकारी द्वारा आरोप पत्रित अधिकारी को जांच अधिकारी की जांच आख्या दिनांकित २३.१२.२०२४ की एक प्रति, उसी दिन, अपना प्रति उत्तर/ बचाव कथन प्रस्तुत करने के लिए प्रेषित की। जो उसने, अपने पत्र दिनांकित १३.०१. २०२५ के माध्यम से प्रस्तुत करा। सक्षम अधिकारी ने आरोप पत्र, जांच अधिकारी की जांच आख्या, आरोप पत्रित अधिकारी का बचाव अभिकथन तथा अनुशासनिक प्रकरण से संबंधित समस्त साक्ष्यों एवं दस्तावेजों के गहन अध्ययन के उपरांत पाया की जांच की कार्यवाही, नैसर्गिक न्याय के नियमों के अनुपालन करते हुए, आरोप पत्रित अधिकारी को बचाव का समुचित अवसर प्रदान करते हुए पूर्ण करी गई। इस संदर्भ में श्री अदितेन्द्र सिंह, याचिकाकर्ता के विद्वान अधिवक्ता ने भी इस प्रक्रिया में किसी प्रकार की कोई विधिक त्रुटि होने का कोई दृष्टांत प्रदर्शित नहीं किया। अतः न्यायालय का मत है कि जांच प्रक्रिया, विधिक रूप से पूर्ण की गयी है।

१२. सक्षम अधिकारी ने संपूर्ण दस्तावेजों व आरोप पत्रित अधिकारी द्वारा जांच आख्या पर दिया गया अभिकथन व प्रबंधन साक्ष्य- ११, जो घटना के कुछ घंटो के बाद, आरोप पत्रित अधिकारी व शिकायतकर्ता के मध्य हुई सचल दूरभाष वार्तालाप की कॉल रिकॉर्डिंग है, को विशेष रूप से श्रवण किया और ध्यान दिया। आदेश में उक्त वार्तालाप को पूर्ण रूप से उद्दीर्णित भी किया और आदेश में यह भी उल्लेखित किया कि:-

"उक्त Recording के श्रवण से यह स्पष्ट है कि आरोप पत्रित अधिकारी को शिकायतकर्ता की बातें भली-भांति स्पष्ट तौर पर समझ में आ रही थी और उनके द्वारा शिकायतकर्ता की बातों को Respond भी किया जा रहा था। उक्त वार्ता से स्पष्ट है कि संदर्भित घटना के उपरांत जब शिकायतकर्ता द्वारा लगभग ०३ बजे आरोप पत्रित अधिकारी को कॉल करके उनसे ऊंचे स्वर में घटना के संदर्भ में सवाल-जवाब किया गया तो आरोप पत्रित अधिकारी द्वारा "Sorry" एवं "Extremely Sorry जैसे शब्दों का प्रयोग करते हुए वार्ता के दौरान अपनी गलती को स्वीकार किया गया था। अतएव आरोप पत्रित अधिकारी का यह कथन कि वे रिश्तेदारों के मध्य बैठे थे जहां शोरगुल हो रहा था, व शोरगुल के चलते उन्हें कु० नेहा रानी की बातें स्पष्ट नहीं हो रही थी, स्वीकार योग्य नहीं है।

यदि आरोप पत्रित अधिकारी के उक्त कथन को मान भी लिया जाए, तो उनके द्वारा अपने अधीनस्थ कार्मिक से बार-बार फोन पर माफी क्यों मांगी गयी व दूसरे दिन सब कुछ स्पष्ट होने पर क्षेत्रीय कार्यालय के समस्त कार्मिकों के समक्ष माफी मांग कर चरित्र हनन करने वाले संगीन आरोपों को किस प्रकार अपना लिया गया। कोई भी निर्दोष व्यक्ति किसी भी परिस्थिति में अत्यंत दबाव के बावजूद ऐसे संगीन आरोपों के सापेक्ष कभी माफी नहीं मांगेगा क्योंकि ऐसे आरोप प्रत्यक्ष/परोक्ष रूप से आरोपित व्यक्ति के चरित्र व उसकी छवि को सामाजिक व पारिवारिक रूप से प्रभावित करते है ना कि परोक्ष रूप से बैंक की छवि को प्रभावित करते है।

पूर्व में ICC के समक्ष हुए बयानों से यह स्पष्ट है कि संदर्भित घटना के पूर्व कु० नेहा रानी तथा आरोप पत्रित अधिकारी के मध्य कोई मतभेद नहीं था, अतएव यह नहीं कहा जा सकता कि संदर्भित शिकायती प्रकरण, कु० नेहा रानी द्वारा किसी प्रकार के पूर्वाग्रह से ग्रसित होकर उठाया गया था।

आरोप पत्रित अधिकारी का यह कथन सत्य है कि संदर्भित घटना यथा आरोप पत्रित अधिकारी द्वारा शिकायतकर्ता के कंधे पर हाथ रखे जाने के सापेक्ष कोई ठोस साक्ष्य नहीं है किंतु कु० मोनिशा (MW-२) तथा शिकायतकर्ता के मध्य हुयी चैट (Mex-१०), शिकायतकर्ता व आरोप पत्रित अधिकारी के मध्य फोन पर हुयी वार्ता की काल रिकार्डिंग (Mex-११) एवं आरोप पत्रित अधिकारी के बयानों में दृष्टिगत विरोधाभास से दिनांक १७.१२.२०२३ को आरोप पत्रित अधिकारी के आवास पर हुये घटनाक्रम व शिकायतकर्ता की शिकायत को बल मिलता है व संभावना की प्रबलता के आधार पर आरोप के सिद्ध होने व शिकायती प्रकरण के सत्य होने की संभावना प्रबल होती है। अतएव आरोप के संदर्भ में आरोप पत्रित अधिकारी द्वारा प्रस्तुत प्रतिवाद स्वीकार योग्य नहीं है।"

(रेखांकित वाक्यांश पर विशेष बल दिया गया)

१३. अतः सक्षम अधिकारी ने आदेश दिनाँक १५.०७.२०२५ द्वारा आरोप अनुच्छेद-१ सिद्ध पाया और आरोप पत्रित अधिकारी/याचिकाकर्ता के विरूद्ध निम्न दण्डादेश पारित कियाः-

"श्री अखिलेश चौहान, कार्मिक सं० ९५९६, प्रबन्धक द्वारा कृत कदाचार पूर्ण कृत्य हेतु उनके विरूद्ध जारी आरोप अनुच्छेद संदर्भ सं० HO/IL/H-२९(२०२३-२४)/१२७० दिनांक २०.०२.२०२४ सहपठित आरोपों की विवरणी संदर्भ सं० HO/IL/H-२९(२०२३-२४)/१२७१ दिनांक २०.०२.२०२४ के माध्यम से लगाये गये आरोप के सिद्ध पाये जाने के सापेक्ष आर्यावर्त बैंक (अधिकारी और कर्मचारी) सेवा विनियमन, २०१० के विनियम सं० ३९(१)(ख)(iii) के अंतर्गत "अनिवार्य सेवानिवृत्ति", का दण्डादेश अधिरोपित किया जाता है।"

१४. याचिकाकर्ता द्वारा उपरोक्त दण्डादेश के विरूद्ध एक अपील दिनांकित १७.२.२०२५, अपीलीय प्राधिकारी के समक्ष दायर की, जो तथ्य व विधिक पहलुओं पर संभावना की प्रबलता/प्रचुरता के आधार पर, आदेश दिनांकित ११.०८.२०२५ द्वारा निरस्त कर दी गई, कि सक्षम अधिकारी द्वारा पारित निर्णय, सकारण एवं सविस्तार है और अधिरोपित दण्ड यथावत रखा।

१५. उपरोक्त आदेश दिनांकित १५.०१.२०२५ व ११.०८.२०२५, वर्तमान याचिका में याचिकाकर्ता/आरोप पत्रित अधिकारी द्वारा आक्षेपित किये गयें हैं।

याचिकाकर्ता/आरोप पत्रित अधिकारी का पक्ष

१६. (क) श्री अदितेन्द्र सिंह, याचिकाकर्ता के विद्वान अधिवक्ता नें प्रतिवेदन किया कि, 'अधिनियम २०१०' के प्रावधानों के अंतर्गत ' आंतरिक परिवाद समिति' द्वारा जाँच आख्या को अनुशासनात्मक कार्यवाही में आधार नहीं बनाया गया। उक्त जाँच आख्या के अनुसार 'घटना सत्य प्रतीत होती है' ऐसा निर्धारित किया गया था और नियोजक द्वारा 'न्यूनतम प्रतिफल की संस्तुति की थी' परन्तु नियोजक ने नये सिरे से अनुशासनात्मक कार्यवाही करी और आरोप को स्वतंत्र रूप सिद्ध कारित करा और 'अनिवार्य सेवानिवृत्ति' का दण्डादेश पारित कर दिया। जो 'अधिनियम २०१०' के विनियम ३१ के अंतर्गत मुख्य शास्तियों में से एक है। यह कार्यवाही 'अधिनियम २०१३' के उपबन्धों के पूर्ण रूप से विपरीत होने के कारण, आरम्भ से ही शून्य (वायड एब इनिशियों) घोषित करनी चाहियें।

(ख) विद्वान अधिवक्ता ने **मेधा कोतवाल लेले एवं अन्य प्रति यूनियन आफ इण्डिया एवं अन्य; (२०१३)१ एस.सी.सी. २९७** के निर्णय को संदर्भित करते हुए अभिकथन किया कि 'लैंगिक उत्पीडन की परिवाद समिति' द्वारा की गई जाँच, अनुशासनात्मक कार्यवाही के संदर्भ में जाँच आख्या माननी चाहियें और सक्षम प्राधिकारी उक्त जाँच आख्या के आधार व अनुशंसा पर ही दण्डादेश पारित कर सकते है। परन्तु वर्तमान प्रकरण में बैक द्वारा 'आंतरिक परिवाद समिति' की जाँच आख्या के निष्कर्ष व सिफारिश को पूर्ण रूप से अनदेखा करके, याचिकाकर्ता के विरूद्ध नवीन रूप से

अनुशासनात्मक कार्यवाही करी और 'अनिवार्य सेवानिवृत्ति' जो मुख्य शास्तियों में से एक है, का दण्डादेश पारित किया। इस प्रकार से 'अधिनियम २०१३' के सभी उपबंधो की अवहेलना की गयी, जो **मेधा कोतवाल लेले (पूर्व में उल्लिखित)** व उच्चतम न्यायालय द्वारा इसी विषय पर **औरेलियानो फर्नानडिज़ प्रति स्टेट आफ गोआ एवं अन्य (२०२४)१ एस.सी.सी. ६३२** के प्रकरण में पारित निर्णय के भी विरूद्ध है। यहां यह स्पष्ट किया जाना आवश्यक है कि **'मेधा कोतवाल लेले (पूर्व में उल्लिखित)** 'अधिनियम २०१३' के लागू होने से पूर्व का निर्णय है, जबकि **औरेलियानो फर्नानडिज़ (पूर्व में उल्लिखित)** का निर्णय उक्त 'अधिनियम २०१३' के लागू होने के उपरांत पारित किया गया है परन्तु विषय वस्तु वर्ष २०१३ से पूर्व की है।

(ग) विद्वान अधिवक्ता ने आक्षेपित आदेश को गुण-दोष के संदर्भ में तर्क दिया, कि 'आंतरिक परिवाद समिति' ने कथित घटना को पूर्ण रूप से 'सत्य' नहीं माना और मात्र यह निष्कर्ष दिया कि 'यह घटना सत्य प्रतीत होती है' और याचिकाकर्ता की अब तक की साफ छवि को देखते हुए व उसके द्वारा क्षमा मांगने के कारण बैंक से नियमानुसार 'न्यूनतम प्रतिफल' की संस्तुति करी परन्तु इसके विपरीत बैंक के सक्षम अधिकारी द्वारा 'अनिवार्य सेवानिवृत्ति' का दण्डादेश अधिरोपित किया, जो अनुचित है। सक्षम अधिकारी को मात्र दण्डादेश का आदेश पारित करना चाहिए था वह भी छोटी शास्तियों में एक दण्ड।

(घ) विद्वान अधिवक्ता ने यह भी प्रतिवेदन किया कि 'अनिवार्य सेवानिवृत्ति' का आदेश आम तौर पर एक दंड नहीं है और वो प्रशासन के सुधार एवं अक्षम कर्मचारियों को हटाने के लिए जनहित में लिया गया एक प्रासंगिक निर्णय हो सकता है। वर्तमान तथ्यों व 'आंतरिक परिवाद समिति' की अनुशंसा के दृष्टिगत छोटी शास्तियों में से कोई एक दण्ड दिया जा सकता था। इस कारण से भी याचिकाकर्ता के साथ अन्याय हुआ है।

<u>प्रतिवादी/नियोक्त बैंक का पक्ष</u>

१७. (क) श्री रमेश कुमार शुक्ला, बैंक के विद्वान अधिवक्ता ने उपरोक्त बहस के विरोध में प्रतिवेदन किया कि 'आंतरिक परिवाद समिति' ने नियोक्ता को यह स्वतंत्रता दी की वो उपरोक्त कृत्य को 'कदाचार' मानते हुए नियमानुसार कार्यवाही करें। इसी कारण 'विनियम २०१०' के उपबन्धो के अंतर्गत, प्राकृतिक न्याय के सिद्धान्तो का परिपालन कर याचिकाकर्ता व पीड़िता का साक्ष्य और अन्य दस्तावेज व अन्य गवाहों के कथन को आधार बनाया व याचिकाकर्ता व शिकायतकर्ता के घटना के कुछ समय उपरान्त हुई सचल दूरभाष वार्तालाप को सुना भी और जाँच आख्या में भी उल्लेखित किया। इसके उपरान्त ही यह निष्कर्ष दिया कि आरोप सिद्ध होता है और आरोप की गंभीरता के संदर्भ में वृहद दण्डादेश का आदेश पारित किया, जो न्यायसंगत व उचित है और उसमें किसी भी कारण से इस न्यायालय द्वारा हस्ताक्षेप न करने की प्रार्थना की।

(ख) 'अधिनियम २०१३' के उपरान्त ऐसे प्रकरण के जाँच की कार्यवाही उक्त अधिनियम के प्रावधानों के अंतर्गत ही हो सकती है तथा उसकी धारा १३ (३)(i) के अनुसार ही 'आंतरिक परिवाद समिति' की सिफारिश पर याचिकाकर्ता (प्रत्यर्थी) पर लागू सेवा नियमों के उपबंधो के अनुसार कदाचार के रूप में लैंगिक उत्पीड़न की कार्यवाही करी और दण्डादेश पारित किया जो एक न्याय संगत आदेश है।

<u>तथ्यात्मक व विधिक विश्लेषण</u>

१८. यहाँ यह अविवादित है कि 'आंतरिक परिवाद समिति' की जाँच आख्या दिनांकित २७.१२.२०२३ की एक प्रति, याचिकाकर्ता को प्राप्त होने के उपरांत भी उसने उक्त आदेश के विरूद्ध 'अधिनियम २०१३' की धारा १८ के उपबंध के अंतर्गत कोई अपील दाखिल नहीं करी। अतः आंतरिक परिवाद समिति का निष्कर्ष कि 'सभी साक्ष्यों व बयानो के आधार पर यह घटना सत्य प्रतीत होती है' विधिक रूप से अंतिम हो गया और इस स्तर पर जब अनुशासनात्मक कार्यवाही भी पूर्ण हो चुकी है तब याचिकाकर्ता उक्त निष्कर्ष को आक्षेपित या खंडित करने की प्रार्थना नहीं कर सकता है। अब एकमात्र प्रश्न यह रह जाता है कि 'आंतरिक परिवाद समिति' की सिफारिश की, 'ये बैंक द्वारा नियमानुसार न्यूनतम प्रतिफल की संस्तुति करती है' का विधिक तात्पर्य क्या है और इन परिस्थितियों में बैंक द्वारा क्या नवीन रूप से

अनुशासनात्मक कार्यवाही की जा सकती है या उक्त निष्कर्ष व अनुशंसा के दृष्टिगत मात्र दण्डादेश ही पारित किया जा सकता है।

१९. इस स्तर पर कोलकत्ता उच्च न्यायालय द्वारा **प्रदीप मंडल प्रति यूनियन आफ इण्डिया व अन्य, २०१६(४)सी.एच.एन. (सी.ए.एल.)११८,** के प्रकरण में पारित निर्णय का संदर्भ लेना समीचीन होगा जहां वर्तमान प्रकरण के तथ्यों के समान तथ्यों के संदर्भ में निम्न निर्धारित किया गया किः-

(क) जब कर्मचारी द्वारा 'आंतरिक परिवाद समिति' के निष्कर्ष व अनुशंसा के विरूद्ध 'अधिनियम २०१३' की धारा १८ के अंतर्गत कोई अपील दायर नहीं करी गयी हो तो उक्त निष्कर्ष व अनुशंसा, नियोक्ता पर आबद्धकारी होगी।

(ख) नियोक्ता द्वारा 'आंतरिक परिवाद समिति' की जांच आख्या के उपरांत अनुशासनात्मक कार्यवाही में पारित दण्डादेश और उसके विरूद्ध अपील निरस्त होने के बाद कर्मचारी को 'आंतरिक परिवाद समिति' के निर्णय के विरूद्ध अपील दायर करने की अनुमति नहीं दी जा सकती है।

(ग) उपरोक्त की दशा में 'अधिनियम, २०१३' की धारा १३(४) के अंतर्गत 'आंतरिक परिवाद समिति' का निष्कर्ष व अनुशंसा को नियोक्ता द्वारा या अनुशासनात्मक अधिकारी या अपीलीय प्राधिकारी द्वारा कोई छेड़छाड़ नहीं की जा सकती है व वह नियोक्ता पर पूर्ण रूप से बाध्य होती है और अनुशासनात्मक प्राधिकारी को उक्त निष्कर्ष व अनुसंशा व प्रकरण के तथ्यों के दृष्टिगत, मात्र दण्ड़ादेश पारित करने का अधिकार है। इस न्यायालय को उपरोक्त विधिक निष्कर्षों का अनुशरण करने में कोई विधिक बाधा नहीं है।

२०. **प्रदीप मंडल (पूर्व में उल्लिखित)** के प्रकरण में पारित निर्णय व 'अधिनियम, २०१३' की धारा १३(४) के दृष्टिगत वर्तमान प्रकरण में नियोक्ता बैंक द्वारा 'आंतरिक परिवाद समिति' की जाँच आख्या के उपरान्त, नवीन रूप से अनुशासनात्मक कार्यवाही करने की कोई आवश्यकता नहीं थी। परन्तु जब अनुशासनात्मक कार्यवाही का निष्कर्ष भी आरोपित आरोप को सत्य मानता है व उपलब्ध सामग्री के आधार पर भी आरोप सिद्ध हुआ है कि याचिकाकर्ता नें 'लैंगिक उत्पीड़न' का 'कदाचार' कारित किया तो न्यायालय का मत है कि उक्त अनुशासनात्मक कार्यवाही 'अनियमित' हो सकती है, परन्तु 'अविधिक' नहीं हो सकती है, क्योकि अन्ततः 'आंतरिक परिवाद समिति' का निष्कर्ष व 'अनुशासनात्मक कार्यवाही' का निष्कर्ष, समान है।

२१. अन्त में यह निर्धारित करना है कि जबकि 'आंतरिक परिवाद समिति' की अनुशंसा कि 'न्यूनतम प्रतिफल' है तो क्या 'अनिवार्य सेवानिवृत्ति' का दण्डादेश जो एक वृहद शास्तियों में से एक है, न्यायसंगत होगा। इस संदर्भ में न्यायालय का मत है कि चूँकि अनुशासनात्मक प्राधिकारी ने 'आंतरिक परिवाद समिति' की दण्ड के लिए की गयी अनुशंसा का संज्ञान ही नहीं लिया था और इस कारण से न्यूनतम प्रतिफल का अर्थ, अर्थात न्यूनतम दण्ड देने के विषय पर विचार ही नहीं किया गया। अतः इस स्तर पर दण्डादेश का निर्णय, विधि विरूद्ध हो जाता है।

२२. 'अधिनियम, २०१३' एक 'विशेष अधिनियम' है जो उच्चतम न्यायालय के एक महत्वपूर्ण निर्णय जो **विशाखा व अन्य प्रति राजस्थान सरकार व अन्य, (१९९७) ६ एस.सी.सी. २४१,** के प्रकरण में दिनांक १३.०८.१९९७ को पारित किया था। जिसके द्वारा कई महत्वपूर्ण दिशा निर्देश दिये गये थे और उसी के परिणाम स्वरूप करीब १६ वर्ष बाद 'अधिनियम, २०१३' अधिनियमित हुआ। जिसका उद्देश्य निम्न हैः-

"लैंगिक उत्पीड़न के परिणामस्वरूप भारत के संविधान के अनुच्छेद 14 और अनुच्छेद 15 के अधीन समता तथा संविधान के अनुच्छेद 21 के अधीन प्राण और गरिमा से जीवन व्यतीत करने के किसी महिला के मूल अधिकारों और किसी वृत्ति का व्यवसाय करने या कोई उपजीविका, व्यापार या कारबार करने के अधिकार का, जिसके अंतर्गत लैंगिक उत्पीड़न से मुक्त सुरक्षित वातावरण का अधिकार भी है, उल्लंघन होता है;

और, लैंगिक उत्पीड़न से संरक्षण तथा गरिमा से कार्य करने का अधिकार, महिलाओं के प्रति सभी प्रकार के विभेदों को दूर करने संबधी अभिसमय जैसे अंतरराष्ट्रीय अभिसमयों और लिखतों द्वारा सर्वव्यापी मान्यताप्राप्त ऐसे मानवाधिकार हैं, जिनका भारत सरकार द्वारा 25 जून, 1993 को अनुसमर्थन किया गया है;

और, कार्यस्थल पर लैंगिक उत्पीड़न से महिलाओं के संरक्षण के लिए उक्त अभिसमय को प्रभावी करने के लिए उपबंध करना समीचीन है;"

२३. यह भी अविवादित विधिक सिद्धान्त है कि 'विशेष अधिनियम' के उपबन्ध सामान्यतः 'सामान्य अधिनियम' के उपबन्धों पर प्रबल होंगे एवं 'अधिनियम २०१३' की धारा २८ के अनुसार इस अधिनियम के उपबंध तत्समय प्रवृत किसी अन्य विधि के उपबंध के अतिरिक्त होंगे न कि अल्पीकरण में। यहाँ यह भी उल्लेख करना समीचीन होगा कि , 'विनियम २०१०' बैंक द्वारा आंतरिक विषयों पर लागू विनियम है इस कारण से भी 'अधिनियम २०१३' के उपबंध बैंक पर पूर्ण रूप से लागू है और बाध्यकारी है एवं 'विनियम २०१०' के उपबंधो पर प्रबल हैं।

२४. अतः दण्डादेश **निरस्त** किया जाता है, एवं प्रकरण को अनुशासनात्मक प्राधिकारी को प्रति प्रेषित इस निर्देश के साथ किया जाता है कि वह 'आंतरिक परिवाद समिति' की अनुशंसा की 'न्यूनतम प्रतिफल की संस्तुति करने पर नये रूप से विचार करके नवीन दण्डादेश पारित करेगा। एवं सुनिश्चित करेंगे कि यह प्रक्रिया आज से ३ माह के भीतर पूर्ण कर ली जायें।

२५. उपरोक्त विश्लेषण, निष्कर्ष व निर्देशों के अनुसार, विचारार्थ विधिक विषय निर्णीत किया जाता है तथा वर्तमान याचिका निस्तारित की जाती है।

(2025) 9 ILRA 391
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 16506 of 2024

Sanjay Kumar ...Petitioner
Versus
Punjab National Bank & Ors.
...Respondents

Counsel for the Petitioner:
Mr. Amit Mishra

Counsel for the Respondents:
Mr. Ashok Shankar Bhatnagar

Issue for Consideration

1. Permissibility to calculate the brother's income while considering the financial condition of the petitioner to decide claim for compassionate appointment.
2. Nature of compassionate appointment to be made in the public office and extent of permissibility of compassionate appointment contrary to the rules of equality.
3. Extent of power of the High Court to modify the government policy.

Headnotes

Service law – Compassionate appointment – Eligibility – Terminal dues – Financial conditions of claimant – Relevancy of the income of petitioner's brother living separately and further of deceased employee's widow to evaluate the financial conditions – Court's power to modify the government policy, extent of:

Held : The reckoning of the petitioner's brother, Arjun Singh's income along with the deceased's family's income is an approach that is absolutely perverse. Arjun Singh is an independent man with a wife and two children to support. He lives separately since the year 2017, when the deceased was still around. Even if he stayed in the same house, it would make no difference at all. He has his own employment and a family to support. In the same house, there can be two homes – Not only the deceased's other son's income, who is an independent man, has to be excluded from the calculation of the deceased's dependant's family income, but also the pension

that the deceased employee's widow received for a few months before she passed away, leaving behind the petitioner with no means. [Paras 15 and 20]

Held further : It is true that compassionate appointment is an exception to the rule of equality in matters of public employment, but, compassionate appointment is a class that is constitutionally valid, if the employer chooses to provide for it, in terms of their policy. Once that policy is forged into statutory rules or circulars, there has to be an even-handed, fair and just application to all such claims, that are put forth, upon the demise of a deceased employee by his dependants, as defined under the scheme. [Para 23]

Held further : The compassionate appointment policy, though cannot be modified by the Court about the parameters of entitlement for a candidate to establish his claim, but, it is not that the Court would fold its hands and permit an absolutely arbitrary, unfair and perverse application of the principles to evaluate a compassionate appointment scheme prescribed by the respondents' policy, rule or circular itself. We think, in this case, there has been an arbitrary evaluation of the petitioner's claim, taking into consideration credits to the family income, that are absolutely not there. [Para 27] (E-1)

Case Law Cited

State Bank of India and another v. Somvir Singh, (200) 4 SCC 778; General Manager, State Bank of India and others v. Anju Jain, (2008) 8 SCC 475 **– referred to.**

List of Acts

HRMD Circular No. 495 dated 26.03.2020, as modified by HRMD Circular No. 550 dated 09.02.2021

List of Keywords

Compassionate appointment; Eligibility; Essential qualification; Terminal dues; Financial condition; Resources; Pension; Monthly income; Living separately; Perverse reasoning; Surviving family; Misspent; Proof of expenditure; Family pension; Financial crisis; Manifest error; Public employment; Constitutionality; Policy; Reasonableness.

Case Arising From

Order dated 09.09.2024 rejecting the petitioner's claim for compassionate appointment.

Appearances for Parties

Advs. for the Petitioners : Mr. Amit Mishra, Advocate

Advs. for the Respondeents : Mr. Ashok Shankar Bhatnagar, Advocate

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

This writ petition is directed against the order dated 09.09.2024 passed by the Chief Manager, Punjab National Bank, Circle Office, Bulandshahr, rejecting the petitioner's claim for compassionate appointment. Also, under challenge is a report of the Committee of Officers dated 16.07.2024, recommending a rejection of the petitioner's proposal for compassionate appointment as well as the decision of the Committee of Officers dated 29.08.2024, resolving to decline the petitioner's claim.

2. The petitioner's father, the late Suraj Pal, was a Class IV employee at the Punjab National Bank1, last posted at Branch Gulawati, District Bulandshahr. He passed away in harness on 05.03.2021, due to a heart attack, while in the care and management of the Metro Hospital. He left behind a widowed mother, Premwati Singh, wife Kamlesh, daughter Pooja and two sons, Arjun Singh and Sanjay Kumar, the petitioner. After Suraj Pal's demise, the petitioner's wife, Kamlesh, represented the matter before the Bank, seeking compassionate appointment for him. The petitioner's brother Arjun Singh as well as sister Pooja filed affidavits of no objection as regards the petitioner's candidature for compassionate appointment. The petitioner asserts that he possesses the essential qualifications for appointment to a considerable post with the Bank under the

compassionate appointment scheme then prevalent. He possesses a certificate of intermediate education, that he earned in the year 2022 from the Uttar Pradesh Board of High School and Intermediate Education. After the petitioner's father's demise, his mother, Kamlesh, also did not survive for long. She suffered from ill heath and passed away on 11.01.2022. The family spent a considerable sum of money in paying for the petitioner's father's and mother's treatment.

3. At the time of his demise, Suraj Pal was in receipt of salary to the tune of ₹24110 per *mensem*. After his death, no sum of money was paid by the Bank to his dependants. The petitioner asserts that a considerable sum of money was spent on his mother's treatment, after his father passed away. He has annexed a photostat copy of Kamlesh's bank account, besides that of his father's, Suraj Pal, to prove the fact. It is the petitioner's case that he does not have a suitable source of livelihood and works as a casual labourer in the village, though he is the holder of an intermediate certificate. He has been issued a certificate in this regard by the Village Pradhan.

4. The petitioner, therefore, moved an application before the Bank, seeking compassionate appointment on 26.11.2022, stating all facts and circumstances of the family. Since no action was taken by the Bank, the petitioner instituted Writ - A No. 22164 of 2022, seeking to secure compassionate appointment for himself. The said writ petition was disposed of at the admission stage on 31.01.2023, after hearing learned Counsel for the Bank and acting on his statement that the petitioner's application is under active consideration of the Bank and would be considered and decided within fifteen days. This Court directed the Bank to decide the petitioner's application for compassionate appointment within next fifteen days, strictly in accordance with law. The Bank was also directed to intimate the petitioner of the decision within 24 hours.

5. The case of the petitioner is that acting on the orders passed by this Court on 31.01.2023, the Bank rejected his claim for compassionate appointment, without considering the financial condition of the petitioner, that is to say, the dependants of the deceased's family. The remark in the order of rejection is that the petitioner's monthly income from all sources is more than 60% of the notional gross salary of the deceased employee (net of notional tax), as per relevant policy guidelines. The petitioner pleads that he has lost his father and mother, involving considerable expenditure incurred in the treatment. His brother, Arjun Singh, lives separately along with his own family. The petitioner, who was dependent on his father, has plunged into a sudden economic crisis.

6. It is also averred that the petitioner's mother, the late Kamlesh, was drawing a family pension to the tune of ₹13,288 per *mensem*, which she received till December, 2021. She died on 11.01.2022, whereafter, family pension, too, has gone away. The petitioner's brother, Arjun Singh receives a monthly salary of ₹15,274, who lives separately with his family comprising his wife and two children. He stays separately since the year 2017. The deceased's family are, therefore, left without a source of income. They were totally dependent upon him.

7. The petitioner has come up with a case that after his father's demise, the deceased's family received terminal dues

from the Bank to the tune of ₹987358. It is urged that the entire sum of terminal dues as well as other savings have been spent in his father's and mother's treatment, and the family are left with no resources. The petitioner's case is that the respondent-Bank have calculated the total income of the deceased's family at a sum of ₹33745.73, worked out in the manner that a sum of ₹5283 has been regarded as income from monthly interest from terminal dues, ₹13288 per month as the deceased's wife's family pension and ₹15274 per month as the deceased's other son's (Arjun Singh) salary. The petitioner has averred that there is no Fixed Deposit in any of the banks, yielding the hefty interest of ₹5183 per *mensem*. Since Kamlesh passed away on 11.01.2022, the family pension has also ceased. The petitioner's brother, Arjun Singh, is living separately, as already asserted, since the year 2017, with a family of his own, comprising his wife and children to support. His income is, therefore, not one that can be reckoned towards the income of the deceased's family. The petitioner says that he has to fend for himself and can hardly make ends meet, working as a casual labourer.

8. A short counter affidavit was filed by Mr. Ashok Shankar Bhatnagar, learned Counsel appearing on behalf of respondent No. 2 on 25.10.2024. A short rejoinder was filed on 27.10.2024. A counter affidavit was filed on behalf of respondent No. 2 dated 07.11.2024, and a further short counter affidavit, on 19.11.2024. A second counter affidavit was filed on behalf of respondent Nos. 1, 2 and 3 on 16.12.2024.

9. With so much of pleadings exchanged, this petition was admitted to hearing on 17.12.2024, which proceeded on that day, but remained inconclusive. The roster changed, on account of which, this matter was assigned to me, under the orders of His Lordship the Hon'ble The Chief Justice dated 15.01.2025. The matter was finally heard and judgment reserved.

10. Heard Mr. Amit Mishra, learned Counsel for the petitioner and Mr. Ashok Shankar Bhatnagar, learned Counsel appearing on behalf of the respondent-Bank.

11. In paragraph No. 8 of the counter affidavit dated 07.11.2024, calculation of the petitioner's eligibility under the compassionate appointment scheme has been set forth. The relevant scheme for compassionate appointment is carried in HRMD Circular No. 495 dated 26.03.2020, as modified by the HRMD Circular No. 550 dated 09.02.2021. The calculation for determining the petitioner's eligibility, as pleaded in the counter affidavit, is as follows :

8. That in view of the laid down procedure the application of Sh. Sanjay Kumar was processed. The details which was considered by the committee of officers are as under:

Particulars of the family of the deceased employee

Sr No.	**Name**	**Relation ship**	**Age**	**Qualification**	**Marital Status**	**Whether employed**	**Details of income**
1	Kamlesh	Wife	49	Illiterate	Widow	No	Family Pe

							nsion Rs. 13288.02
2	Sanjay Kumar	Son	23	10+2	Single	No	Nil
3	Arjun Singh	Son	30	5th	Married	Yes, PTS in PNB (Emp Id 51516199),	Rs. 15274.08
4	Pooja	Daughter	33	8th	Married	No	Nil

Financial Position of the family of the Deceased

a) Immovable property:
One house self occupied

b) Terminal Dues received from the bank:

Dues Paid	**Amount (in Rs.)**	**O/s Loans with Interest**	**Amount (in Rs.)**
Provident Fund	450665.67	Housing Loan	Nil
Gratuity	741010.74	Clean OD	105419.42
Leave Encashment	142137.2	Personal Loan	266036
Financial Aid	50000	Festival Loan	25000
TOTAL (A)	1383813.61	TOTAL (B)	**396455.42**
NET TERMINAL DUES RECEIVED FROM BANK (A-B)= Rs. 987358.19			

c) Family Pension : Rs. 13288.02

d) At the time of his death, the monthly gross salary received by the employee was Rs. 41805.06

Calculation of Eligibility of the Applicant under the Relevant Scheme :

The relevant details for determining eligibility of the dependent family members for employment as per the above provisions are given as under:-

Sr. No.	**Particulars**	**Amount in Rs.**
1	Total Amount of Terminal Dues	1383813.61
2	Total Amount of Bank Loans	396455.42
3	Net Amount of Terminal Dues (1-2)	987358.19
4	Total amount of other investments	Nil
5	Loans against other investments, if	Nil

	any	
6	Net amount of other Investments	Nil
7	Monthly interest on Net Terminal dues (as at S.no.3) @6.30% (Maximum FD Interest of Bank applicable for staff)	5183.63
8	Monthly income from other investments (as at S.no.6)@6.30%	Nil
9	Amount of monthly Family Pension	13288.02
10	Any other income (Salary of Shri Arjun Singh, Emp ID 5151619)	15274.08
11	**Total Monthly income (7 to 10)**	**33745.73**
12	Notional Gross Monthly Salary of Deceased (Feb 2021)	41805.06
13	Amount of notional Income Tax deducted	1097.75
14	Salary (Net of notional tax)	40707.31
15	**Eligible Amount (60% of 14)**	**24424.38**
16	Whether eligible for compassionate Appointment?	**NO**

12. The case for denial of the petitioner's claim for compassionate appointment is pleaded in paragraph no. 9 of the counter affidavit, which must be quoted for every word of it. It reads :

9. That the total last drawn salary (net of taxes) was Rs. 40,707.31 and the eligible amount being 60% comes to Rs. 24,424.38. The total monthly income of the family from all sources comes to **Rs. 33,745.73** which is more than 60% of the last drawn gross salary net of taxes **(Rs. 24,424.38)** of the deceased employee. Hence, the Committee of Officers found that Shri Sanjay Kumar son of Late Shri Suraj Pal Singh was not eligible for compassionate appointment in terms of above provisions of the Scheme.

13. Learned Counsel for parties have furthered their submissions more or less in tune with the parties′ pleadings.

14. The question is if under the scheme for compassionate appointment, current in the bank at the time of the petitioner's father's demise, is he eligible for compassionate appointment?

15. We have carefully heard learned Counsel for parties and perused the Committee's reasoning for discarding the petitioner's claim. The reckoning of the petitioner's brother, Arjun Singh's income along with the deceased's family's income is an approach that is absolutely perverse. Arjun Singh is an independent man with a wife and two children to support. He lives separately since the year 2017, when the deceased was still around. Even if he stayed in the same house, it would make no difference at all. He has his own employment and a family to support. In the same house, there can be two homes. Therefore, tagging Arjun Singh's monthly income as part of the deceased's family's

monthly income is the result of a perverse reasoning. Arjun Singh's income has to be excluded from the deceased's family income, which would reduce the dependant family's income, as Mr. Bhatnagar admits, to a figure of ₹18471.65.

16. But, this is not the end of the matter. The total sum of terminal dues received on account of the deceased's demise is a figure of ₹987358, from which, a monthly income of ₹ 5183.63, on the basis of interest of 6.30% (maximum Fixed Deposit interest of bank applicable for staff) has been inferred. This item of the deceased's monthly income is sans material. It is not that the terminal dues received by the surviving family of the deceased have been wasted or misspent. The petitioner claims that the sum of money received in terminal dues has been spent in the treatment of the deceased and the petitioner's mother, besides drawing on the corpus of other investments that the family had.

17. It is not reasonable to think that any sum of money would have been spent out of the deceased's terminal dues received from the Bank on his treatment as such, because the terminal dues would have, in any case, been received after the deceased passed away. But, a perusal of the deceased's wife's statement of account from 03.10.2021 to 02.11.2021 shows that substantial withdrawals shown there could be the money spent on the deceased's wife's treatment, as she passed away soon after the deceased employee′s demise. What was spent in medical treatment of the deceased's wife is a matter that requires to be closely scrutinised, before drawing a conclusion if the entire sum of money paid in terminal benefits was available as investment with the deceased's family, yielding a monthly income. The proof of expenditure ought have been annexed by the petitioner, and, if not that, the petitioner should have been asked to produce the relevant vouchers etc. In the absence of a clear determination that the terminal dues were not spent on the deceased's wife's medical treatment, a blanket inference, that this sum of money was available to the deceased's family, and now the petitioner has a source of monthly income by interest, is patently flawed.

18. The more important aspect in this calculation of denial for the petitioner is consideration of the family pension that the deceased's wife received for a short while. The deceased passed away on 05.03.2021, while his wife expired on 11.01.2022. She passed away, therefore, within the space of ten months after her husband's demise. The deceased's family, therefore, were in receipt of family pension for a very small period of time. This period of time cannot be regarded as one stabilising the family and bringing them out of the financial crisis, that they plunged into, upon the deceased employee′s sudden demise. If the widow would have lived on for a relatively longer period of time, it could be said that the family pension would account towards the deceased's dependants' family income. The extremely short-lived feature of the family pension in this case would not serve to reckon the deceased's dependents′ total income.

19. We were persuaded by Mr. Bhatnagar to accept his submission that family income has to be reckoned precisely on the date of the deceased's demise. Notwithstanding the fact that compassionate appointment is not an inherent right, but one created by statutory rules or employer's policy, carried in administrative circulars, as in this case, a

policy, once there, has to be reasonably construed. It cannot be applied in an arbitrary manner. The purpose is to bail out the dependants of the deceased from financial crisis. A widow, surviving a few months after the employee's death and receiving pension for a short period of time, cannot be regarded as a factor that would stabilise the dependent family members and enable them to tide over the financial crisis.

20. In the circumstances of this case, therefore, we are of clear opinion that not only the deceased's other son's income, who is an independent man, has to be excluded from the calculation of the deceased's dependant's family income, but also the pension that the deceased employee's widow received for a few months before she passed away, leaving behind the petitioner with no means.

21. The reliance placed by Mr. Bhatnagar upon the authority of the Supreme Court in **State Bank of India and another v. Somvir Singh**[2], we are afraid, would not be of much assistance to the respondents. The reason is that the respondents have evaluated the petitioner's claim for compassionate appointment in manifest error, committing a blunder of numerical nature. They have added to the income of the deceased employee's family, represented by the petitioner, sums of money that were not at all relevant to reckon, as already remarked.

22. Learned Counsel for the respondents has next placed reliance upon the authority of the Supreme Court in **General Manager, State Bank of India and others v. Anju Jain**[3]**.** He has invited our attention to the following remarks in **Anju Jain** *(supra)* :

31. We are of the view that both the courts were wrong in granting relief to the writ petitioner. Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, the State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.

23. It is true that it is always open to the employer to devise a formula to determine a threshold of eligibility, based on financial circumstances of the deceased's family, in order to enable them to a consideration for compassionate appointment. There is nothing inherently unfair or discriminatory about it. But, the formula, once devised, as already said, cannot be applied in an arbitrary fashion in order to reject a claim for compassionate appointment. Considerations irrelevant under the employer's scheme or a perverse application of principles embodied in the scheme is not to be countenanced. It is true that compassionate appointment is an

exception to the rule of equality in matters of public employment, but, compassionate appointment is a class that is constitutionally valid, if the employer chooses to provide for it, in terms of their policy. Once that policy is forged into statutory rules or circulars, there has to be an even-handed, fair and just application to all such claims, that are put forth, upon the demise of a deceased employee by his dependants, as defined under the scheme. It is not the respondents′ case that the petitioner is not a member of the deceased′s family, as defined under the scheme. They have discarded the claim on the basis of working out an income for the deceased′s family, that is absolutely not there.

24. There is not much cavil about the principle or the fact that a married son, living apart from the deceased′s family, with his wife and children, cannot have his income reckoned towards the deceased′s family′s income. The more subtle issue, that is involved here, is about the pension that was paid to the widow until she was alive for a short while - less than a year after the deceased′s demise. If the widow had lived for a reasonably long period of time, long enough for the petitioner, definitely a dependant of the deceased's, to settle himself in life and get over the sudden crisis brought about by the deceased employee's passing away from this mortal world, different conditions would have applied. The test, we think, that would be just and fair to apply, well-grounded in reasonableness, as understood under the Constitution, would be if the financial crises, that the employee's sudden demise created, has blown over. Indeed, not in this case. The deceased passed away on 05.03.2021 and his widow died on 11.01.2022. The short spell of time that the family pension enured to the benefit of the deceased employee's family, was not long enough to provide the petitioner with a reasonable degree of opportunity to find for himself suitable employment. The time period, we think, that would be reasonable, cannot be placed in a straight-jacket formula, but still, it should be long enough to enable a surviving and young dependant of the deceased employee to stake claim for public employment or find other means of livelihood. Decidedly, in our opinion, a time period of less than a year is not that long, where the crisis brought on by the employee's demise can be said to be a matter of history.

25. The respondents definitely faltered in not accounting for the money spent out of terminal dues on the deceased's widow's aliment, while alive. It had to be taken note of and counted out of the funds available for investment. If the medical expenditure was reimbursable and was actually reimbursed, it would be a different matter, but then, that finding has to be recorded. The evaluation of the petitioner's claim, where a recurring monthly income has been read to the credit of the deceased employee's family, has to be understood and revaluated in the aforesaid perspective. Likewise, revaluation of the petitioner's claim must be one that places out of consideration the petitioner's brother, Arjun Singh's salary of ₹15274 per *mensem*. Also, the family pension, which the wife received, while alive, must be discounted.

26. The respondents are, therefore, obliged to reconsider the petitioner's claim with a different set of figures in terms of their policy. Else, the policy would suffer from the vice of arbitrariness.

27. The compassionate appointment policy, though cannot be modified by the

Court about the parameters of entitlement for a candidate to establish his claim, but, it is not that the Court would fold its hands and permit an absolutely arbitrary, unfair and perverse application of the principles to evaluate a compassionate appointment scheme prescribed by the respondents' policy, rule or circular itself. We think, in this case, there has been an arbitrary evaluation of the petitioner's claim, taking into consideration credits to the family income, that are absolutely not there.

28. In the result, this writ petition **succeeds** and stands **allowed**. The impugned order dated 09.09.2024 passed by the Chief Manager, Punjab National Bank, Circle Office, Bulandshahr is hereby **quashed**. Likewise, the report of the Committee of Officers dated 16.07.2024 and the decision of the Committee of Officers dated 29.08.2024 are also quashed. A *mandamus* is issued to the Chief Manager, Punjab National Bank, Circle Office, Bulandshahr and the Committee of Officers of the Bank, designated under the HRMD Circular No. 495 dated 26.03.2020, as modified by HRMD Circular No. 550 dated 09.02.2021, to reconsider the petitioner's claim for compassionate appointment, bearing in mind the remarks carried in this judgment. Thereafter, orders shall be made on the petitioner's claim for compassionate appointment within a period of two months of the date of receipt of a copy of this order by the Chief Manager, Punjab National Bank, Circle Office, Bulandshahr.

29. The Registrar (Compliance) is directed to communicate this order to the Chief Manager, Punjab National Bank, Circle Office, Bulandshahr through the learned Chief Judicial Magistrate, Bulandshahr.

(2025) 9 ILRA 400
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 16747 of 2024

Sonu Nagar ...Petitioner
Versus
The General Manager, Punjab National Bank & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Virendra Singh

Counsel for the Respondents:
Mr. Ashok Shankar Bhatnagar

Issue for Consideration

1. Relevancy of the financial criteria to get compassionate appointment as fixed under the Circular, and effect of non-fulfillment of this criteria.
2. Nature of right to compassionate appointment on the public post and it's limitations.

Headnotes

Service law – Compassionate appointment – Eligibility – Petitioner's father was died during service – No objection certificate of other family members was also filed in support of application – Total monthly income of all the members was more than 60% of the last gross salary – Relevancy – Reckoning of income of petitioner's son namely Monu Nagar along with the deceased's family income – Permissibility:
Held : The reckoning of Monu Nagar's income along with the deceased's family income after him, is absolutely impermissible. Monu sNagar is an independent man with his own wife and children, living separately since the time when the deceased was around. Even if he stayed in the same house, it would make no difference. [Para 19]

Held further : The right to compassionate appointment is not an inherent right. It is governed by the employer's policy, sometimes expressed in statutory rules, and at others, in administrative circulars. Since the right is the creature either of a statute embodying a policy or a policy expressed in administrative circulars, the right is no more and no less than what the rule or the policy circular says it is – If the compassionate appointment policy or the rules of an employer devise a formula, as in the present case, to determine a threshold of eligibility based on the financial circumstances of the family, there is nothing illegal, unfair or discriminatory about it. [Paras 24 and 25]

Held further : The petitioner would be eligible under the respondent's compassionate appointment policy if the income of the deceased's family were 13241.11 or less, applying 60% of the notional gross monthly salary last drawn by the deceased's standard, stipulated under the policy, as the entitling criteria – The figure does not bring the petitioner's case where the deceased's family were eligible to have a member of theirs appointed on compassionate basis in terms of the dying-in-harness policy applicable to the respondents. [Para 30] (E-1)

Case Law Cited

State Bank of India and another v. Somvir Singh, (2007) 4 SCC 778; General Manager, State of India and others v. Anju Jain, (2008) 8 SCC 475; Canara Bank v. Ajithumar G.K., 2025 SCC OnLine SC 290 **– referred to.**

List of Acts

HRMD Circular No. 495 dated 26.03.2020, as modified by the HRMD Circular No. 550 dated 09.02.2021

List of Keywords

Compassionate appointment; Death in harness; No objection; Eligibility; Family profile; Family's income; Living separately; Perverse reasoning; Terminal dues; Pure conjecture; Vague assertion; Inherent right; Administrative circular; Right; Statute; Policy; Vested right; Pick-and-choose basis; Rule of equality; Public employment; Reasonable nexus; Sudden demise of the breadwinner; Intelligible differentia; Financial circumstances; Terminal benefits; Employer's policy; Gross monthly salary.

Case Arising From

Order dated 09.09.2024 rejecting the petitioner's claim for compassionate appointment.

Appearances for Parties

Advs. for the Petitioners : Mr. Virendra Singh
Advs. for the Respondeents : Mr. Ashok Shankar Bhatnagar

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

The petitioner's claim for compassionate appointment has been rejected by the respondents, the officers of the Punjab National Bank1, and the petitioner thinks that they have done so arbitrarily, committing a manifest error of law. He assails the decision of the Bank to refuse his application for compassionate appointment on account of his father's death in harness. The petitioner has challenged various orders and resolutions passed by the officers and Committees of the Bank, declining his claim, to which a moreful allusion would be made later in this judgment.

2. The petitioner's father served the Indian Army, which he left upon his retirement from service. He availed the benefit of being an ex-serviceman and was appointed as an Armed Guard with the Bank on 16.12.2014. His date of birth was 20.07.1973. The petitioner's father, the late Satyaveer Singh was a permanent employee of the Bank. He died in harness on 17.12.2016, suffering a cardiac arrest. The petitioner made an application for compassionate appointment under the dying-in-harness scheme applicable on 11.06.2020. He made another application on 19.02.2021. At the time of his demise, the petitioner's father was survived by his mother Ramwati, aged about 72 years, his wife Sudesh Devi aged about 45 years, a

son Monu Nagar, aged about 27 years, another son, Sonu Nagar (the petitioner), aged about 22 years, still another son, Praveen, aged about 18 years, and, Sonika, a married daughter aged 24 years. These facts about the deceased's family profile are clearly set forth in the application that the petitioner made for compassionate appointment to the Bank. It was supported by a 'No Objection' from the other family members, saying that they would have no objection if the petitioner's claim for compassionate appointment were considered by the Bank.

3. The petitioner, on the strength of the no objection certificate, which was on affidavit by the other survivors of the deceased, applied for compassionate appointment, as aforesaid. The Bank raised certain objections by their letter dated 23.02.2022, which the petitioner, through an affidavit, caused to be removed. These objections were with regard to dependency of the family members upon the deceased.

4. The petitioner says that he moved an application before the Branch Manager (Currency Chest), Ambedkar Marg, Ghaziabad, pressing his claim for compassionate appointment. The Branch Manager last mentioned visited the petitioner's Village Atta, Post Office Gulaothi, District Bulandshahr and appraised the circumstances of the deceased's family. He verified the particulars about the petitioner's claim. The petitioner's application was considered in all its details by a Committee comprising two officers - the Chief Manager and a Senior Manager, who, vide their memo dated 30.12.2022, found the petitioner not entitled to compassionate appointment in terms of the scheme for compassionate appointment dated 26.03.2020, as revised vide circular dated 09.02.2021 and 17.07.2021.

5. After consideration by the Committee as aforesaid, recommendations were placed for decision before another Committee of three officers, comprising an Assistant General Manager (HRDD), the Deputy General Manager (HRMD) and the General Manager (HRD). They tick-marked their approval to the recommendations of the two-member committee, declining the petitioner's claim. The Committee of three Managers of the Bank, who held the petitioner ineligible, have not dated their orders, but the orders appear to be one passed in December, 2022, as the footnote of the orders would show. On the basis of the decision of the three-member Committee, a formal order dated 28.04.2023 was issued, where the Chief Manager (HRD), Kavinagar, Ghaziabad rejected the petitioner's claim. The reason assigned to decline the petitioner's claim all through is that since the income of the family from all sources, relevant under the Scheme is more than 60 per cent of the notional gross salary of the employee, the petitioner's claim for compassionate appointment was not sustainable.

6. Aggrieved by the resolution of the Committee dated 30.12.2022 and the orders formally rejecting the petitioner's claim passed by the Chief Manager (HRD), Ghaziabad dated 20.03.2023, the petitioner has preferred the present writ petition.

7. It may be clarified here that though this writ petition was heard along with Writ-A No. 16506 of 2024, as certain questions of fact and law were common involving the Bank, but we think that looking to the very different facts in both

matters, separate judgment should be passed.

8. A notice of motion was issued on 25.11.2024, in response to which, the Bank has filed a counter affidavit. The petitioner made an application for amendment, which was granted on 17.12.2024, leading him to file an amended copy of the writ petition, incorporating the necessary pleas. The petition was admitted to hearing on 18.03.2025, which proceeded forthwith and judgment reserved.

9. Heard Mr. Virendra Singh, learned Counsel for the petitioner and Mr. Ashok Shankar Bhatnagar, learned Counsel appearing on behalf of the respondent-Bank.

10. The thrust of the submissions made by Mr. Virendra Singh, learned Counsel for the petitioner, is that the Committee, which appraised the petitioner's case and put up their recommendations for consideration by the other Committee for decision, all dated 30.12.2022, took into consideration an irrelevant item towards the income of the deceased's family, on the foot of which, they rejected the petitioner's claim in manifest error. It is urged that they tagged along with the income of the family, a sum of ₹35,337 per month, which is the income of Monu Nagar, an independent son of the deceased, who was not dependent upon the deceased for his livelihood and has a family of his own to take care of. He resides separately. The submission is that since the total income of the deceased's family is the guiding criteria, fixed at less than 60% of the gross monthly salary last drawn by the deceased, entitling a dependent of his to compassionate appointment, the Committee's calculation to discard the petitioner's claim has gone all wrong. It is further pointed out by the learned Counsel for the petitioner that in their report, the Committee, which appraised the petitioner's claim, have held that the family received terminal dues from the Bank in the sum of ₹2,23,329. He submits that what the Committee ignored from consideration are the terminal dues as well as other savings that the family had spent for survival, and, particularly, defraying the expenditure in marriage of the deceased's daughter and the petitioner's sister. The petitioner does not have income from any other source. It is also submitted that the Committee also ignored the fact that there is a loan, which the petitioner has taken to support his livelihood, which is still outstanding.

11. It is next submitted that the calculation of the family members' income from all sources, fixing it at a sum of ₹64,219.41 per month is patently erroneous. It is said that ₹1488.85 has been worked out on account of monthly interest payable on the net terminal dues at the rate of 8% per *annum*, ₹3084.44 per month as monthly income from other investments, also at the rate of 8% and ₹20,309 per month as the sum of money payable on account of family pension received by the deceased's widow from the Army. To this has been added, as already pointed out, in manifest error, a sum of ₹35,337, being the salary drawn by the petitioner's brother, Monu Nagar, who has nothing to do with the deceased's family and lives independently with his own family, comprising his wife and children. A further sum of ₹4000 per month, as the learned Counsel for the petitioner says, has been added on account of the petitioner's monthly income. Learned Counsel for the petitioner submits that there is no fixed deposit with any Bank, and, therefore, the

monthly income of ₹1488.86, earned on the net terminal dues paid to the surviving family of the deceased, is without basis. It is argued most persuasively that Monu Nagar is a married man, who lives separately along with his family, comprising his wife and children at Sri Gandhi Nagar, Rajasthan since 2015, that is to say, before the deceased employee passed away. There is absolutely no basis to tag his income along with the income of the deceased's family, comprising his dependants.

12. It is next pointed out that so far as the petitioner is concerned, he does manual work as a labourer in the village and the locality. He has taken an agricultural loan from the State Bank of India, Branch Gulaoti, District Bulandshahr to establish his livelihood. The loan is in the sum of ₹1,47,000. The petitioner has earned his B.Com degree. The financial condition of the family is very penurious. The respondents have calculated the deceased's family's income in manifest error, without any basis, to reach those figures that are there in the recommending Committee's report, on the foot of which, the decision-making Committee have resolved to reject the petitioner's claim. It is also emphasized that the family do not have any funds with them invested in the fixed deposit and that assumption by the Committee is bereft of the deceased's family's financial details. Learned Counsel for the petitioner submits that the petitioner is entitled to be considered for compassionate appointment under the dying-in-harness scheme applicable, that is to say, the one in cases of deaths of the employees occurring prior to 26.03.2020, except CoViD-19 cases in terms of the HRMD Circular No. 495 dated 26.03.2020 and its subsequent revisions.

13. Mr. Ashok Shankar Bhatnagar, learned Counsel appearing on behalf of the respondents points out that upon the demise of Satyaveer Singh, the petitioner's application was considered. He has given out, in tabular form, the family profile of the deceased employee and the family's income, that was taken into consideration by the Committee of Officers assigned to decide the compassionate appointee's case. The said information, which Mr. Bhatnagar has placed before the Court in tabular form, is shown below :

• **Particulars of the family of the deceased employee**

Sr. No.	**Name**	**Relationship**	**Age**	**Qualification**	**Marital Status**	**Whether employed**	**Details of income**
1	Sudesh Devi	Spouse	45	-	Widow	No	Army Pension Rs. 20,309/-
2	Monu Nagar	Son	27	12th	Married	Yes	Rs. 35,337/-
3	Sonu Nagar	Son	22	B.Com.	Married	No	Rs. 4.000/-

							(Agri. Income)
4	Praveen	Son	17	12th	Single	No	Nil
5	Soni ka	Daughter	24	12th	Married	No	Nil

14. The financial position of the deceased's family, that was considered by the Committee appointed by the Bank to consider compassionate appointment claims, has been placed by Mr. Bhatnagar in the following terms :

Financial Position of the family of the Deceased

a) Immovable Property: One house self occupied

b) Terminal Dues received from the bank:

Dues Paid	**Amount (in Rs.)**	**O/s Loans with Interest**	**Amount (in Rs.)**
Provident Fund /NPS	1,03,136.00		Nil
Gratuity	25780	O/s in Clean OD	
Leave Encashment	14143	Vehicle Loan	
Contributor Fund	30000	Festival Loan	
Financial Aid	50000	Society Loan with Bank's permission	
TOTAL (A)	2,23,329.00	TOTAL (B)	Nil
NET TERMINAL DUES RECEIVED FROM BANK (A-B) = Rs. 2,23,329.00			

c) Family Pension : Nil

d) Army Pension : Rs. 20,309/-

• Amount Received / Lilkely to be received from other sources / investments : Rs. 4,61,251/- (LIC) and Rs. 1,431.60 (Deposit)

• At the time of his death, the monthly gross salary received by the employee was Rs. 22,068.52

15. Mr. Bhatnagar has then invited the Court's attention to the Committee's calculation of the petitioner's entitlement under the compassionate appointment scheme. This, again, according to the learned Counsel, is a tabular description, which he has placed before the Court. It is depicted below :

Sr. No.	**Particulars**	**Amount in Rs.**
1	Total Amount of Terminal Dues	2,23,329.00
2	Total Amount of Bank Loans	Nil
3	Total amount of other investments	4,62,682.60
4	Loans against other investments, if any	Nil
5	Net amount of other	4,62,682.60

	Investments	
6	Monthly interest on Net Terminal dues (as at S.no.1) @ 8% (Maximum FD Interest of Bank applicable for staff)	1488.56
7	Monthly income from other investments (as at S.no.3) @ 8%	3084.55
8	Amount of monthly Family Pension (Army Pension)	20309
9	Any other income **Monthly income of Monu Nagar** Monthly income of Sonu Nagar	 **35,337.00** 4,000.00
10	**Total Monthly income (7 to 10)**	**64219.41**
11	Notional Gross Monthly Salary of Deceased (November, 2016)	22068.52
12	Amount of notional Income Tax deducted	Nil
13	Salary (Net of notional tax)	22068.52
14	**Eligible Amount (60% of 14)**	13241.11
15	Whether eligible for compassionate Appointment?	**NO**

16. Learned Counsel for the petitioner submits that the last salary drawn by the deceased (net of taxes) was ₹22068.52, and, in order for the petitioner to be eligible for compassionate appointment, his dependent family members should have an income less than 60% of the employee's last gross salary drawn, net of taxes. The total monthly income of the family from all sources is a sum of ₹64219.41, which is more than 60% of the last gross salary, net of taxes, that the deceased drew. It is for this reason that the Bank's Committee for Compassionate Appointments did not find the petitioner eligible under the scheme.

17. It is next contended by Mr. Bhatnagar that the sole contention that the learned Counsel for the petitioner has raised is that the monthly income of the petitioner's brother, Monu Nagar, amounting to a sum of ₹35337 per month, cannot be taken into consideration while calculating the family income of the deceased at the time of his demise, inasmuch as Monu Nagar was a married man, with his own family, independent of the deceased's family. It is submitted by learned Counsel for the respondents that even if Monu Nagar's monthly income is excluded, while calculating the family's income, the family would still have an income of ₹28882 per month per month, which is much above the last gross salary, net of taxes, drawn by the deceased employee, to wit, ₹22068.52. The deceased's family, therefore, are not in indigent circumstances, nor is the petitioner, within the meaning of HRMD Circular No. 495 dated 26.03.2020, as modified by HRMD Circular No. 550 dated 09.02.2021. It is urged that in these circumstances, the petitioner has no case for consideration of his compassionate appointment claim. It is argued that compassionate appointment is offered on humanitarian grounds and gives expression to the rule of equality in matters of public employment. It is not a vested right and this Court, in exercise of power of judicial review, cannot be swayed by sympathetic considerations.

18. We have carefully heard learned Counsel for parties, perused the

Committee's reasoning for discarding the petitioner's claim and the order impugned.

19. We must say at once that so far as the Committee's analysis of the petitioner's claim for compassionate appointment is concerned, the reckoning of Monu Nagar's income along with the deceased's family income after him, is absolutely impermissible. Monu Nagar is an independent man with his own wife and children, living separately since the time when the deceased was around. Even if he stayed in the same house, it would make no difference. He has his own employment and a family to support. Therefore, tagging Monu Nagar's monthly income as part of the deceased's family's monthly income is the result of perverse reasoning. Monu Nagar's income has to be excluded from the deceased's family income, which would reduce the dependent family's income, as Mr. Bhatnagar admits, to a figure of ₹28882 per month. This figure too, we think, not merely on impressions, is much inflated.

20. The total sum of terminal dues received on account of the deceased's demise is a figure of ₹223329, from which, a monthly income of ₹1488.86, on the basis of an interest of 8% per *annum* (maximum Fixed Deposit interest applicable for bank staff) has been inferred. This item, in the deceased's monthly income, is sans material. It is not that the terminal dues received by the surviving family of the deceased have been wasted or misspent. This sum of money, together with whatever has been regarded for the deceased as the corpus of other investments, according to the petitioner, has been spent in solemnising the deceased's daughter's marriage. The other investments, that have been taken into consideration, is a sum of ₹462682. From this sum of money, a monthly income of ₹3084.55 has been inferred. We have already indicated that this sum of money, even if regarded to be there on account of investments of the family, has been well utilised, according to the petitioner, in solemnising the deceased's daughter's marriage. The sum of ₹223329 paid by the Bank to the deceased's dependant family members, after his demise, is not a princely sum, going by the contemporary worth of money at the time when Satyaveer Singh passed away and in the short run thereafter.

21. This holds true for the sum of ₹462682.60 on account of other investments inferred for the deceased's dependent family. The total sum of ₹686011.60 held to the credit of the deceased's surviving and dependant family is a modest sum of money, which the family would have spent in the deceased's daughter's wedding. There is no reason to infer, even if the respondents are absolutely right, that this money was available to the family. That the petitioner's case that it was all spent in solemnising his sister's marriage, is a claim not to be disbelieved. The sum of ₹686011.60 (₹223329+₹462682.60) as a corpus, available to the deceased's family, has to be discounted, and, *a fortiori*, the monthly income held to be derived from the said claim.

22. Quite apart, the availability of ₹223329 in the hands of the deceased's family after his demise can be accepted as that spent in his daughter's wedding. The other sum of ₹462682 shown under the head of "Other Investments" is an inference based on pure conjecture. No evidence *aliunde* has been shown to us during hearing, particularly, in the affidavit filed

on behalf of the respondents, that this sum of money amounting to ₹462682 was, in fact, available to the deceased's family. The respondents are a Bank and they should have provided the particulars of the availability of this sum of money in an account of the deceased's widow or other family members in order to credit the family with its possession. There is vague assertion that this sum of money is likely to be received from other sources/investments. This is pure conjecture in the absence of specific material to show that this sum of money was, in fact, available in any kind of security or deposit to the deceased's family.

23. Therefore, from the deceased's family income, we have to further deduct a sum of ₹4573.41. Deducting this sum of money from the monthly income of ₹28882 per month, acknowledged by Mr. Bhatnagar during hearing as the deceased's family's income, would be reduced to a sum of ₹24308.59. This is the monthly income, on the foot of which, the deceased's entitlement to compassionate appointment was to be considered by the Bank. They, instead, considered it on an inflated figure of ₹64219.41 per month. Mr. Bhatnagar very fairly said before us, as already remarked, that the deceased's income, that ought have been considered by the Committee, was a figure of ₹28882 per month, though he hastened to add that, that figure would not place the petitioner's case under the policy in any better stead. We have already found that Mr. Bhatnagar's fair and candid concession also does not represent the correct figure of the deceased's family's monthly income. It is a still lower sum of money per *mensem*, that is to say, ₹24308.59.

24. It now has to be examined if the petitioner has a right to be considered for compassionate appointment. It would be well to remember that the right to compassionate appointment is not an inherent right. It is governed by the employer's policy, sometimes expressed in statutory rules, and at others, in administrative circulars. Since the right is the creature either of a statute embodying a policy or a policy expressed in administrative circulars, the right is no more and no less than what the rule or the policy circular says it is. Also, even if a right to a consideration for compassionate appointment is there under the rules or the policy, there is no vested right to be actually appointed, inhering in the dependant of a deceased employee. Of course, if a rule or policy is there and everything is the same as between two candidates, the respondents cannot differentially apply the policy on a pick-and-choose basis. In this connection, reference may be made to the decision of the Supreme Court in **State Bank of India and another v. Somvir Singh**[2], where it has been held :

10. There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of the employee who died in harness are not in penury and without any means of livelihood. The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

13. In our considered opinion, the High Court itself could not have undertaken any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself to is whether the decision-making process rejecting the claim of the respondent for compassionate appointment is vitiated? Whether the order is not in conformity with the scheme framed by the appellant Bank? It is not even urged that the order passed by the competent authority is not in accordance with the scheme. It is well settled that the hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank. It is not a case where the dependants of the deceased employee are left "without any means of livelihood" and unable to make both ends meet. The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant Bank that the respondent was not living hand-to-mouth. As observed by this Court in G.M. (D&PB) v. Kunti Tiwary [(2004) 7 SCC 271 : 2004 SCC (L&S) 943] the High Court cannot dilute the criterion of penury to one of "not very well-to-do". The view taken by the Division Bench of the High Court may amount to varying the existing scheme framed by the appellant Bank. Such a course is impermissible in law.

25. It has also to be remembered that compassionate appointment is an exception to the rule of equality in public employment, which is otherwise governed by the mandate of Articles 14 and 16 of the Constitution. It is designed to save from penury a family which has plunged into the abyss of economic crisis upon the sudden demise of the breadwinner. A scheme for compassionate appointment or the rules, if they provide for evaluation of the financial circumstances of the family, before offering compassionate appointment to one of the dependant family members, brings about an intelligible differentia, bearing a reasonable nexus with the object to be achieved. If the compassionate appointment policy or the rules of an employer devise a formula, as in the present case, to determine a threshold of eligibility based on the financial circumstances of the family, there is nothing illegal, unfair or discriminatory about it. In this connection, reference may be made to the remarks of the Supreme Court in **General Manager,**

State of India and others v. Anju Jain[3], where it is observed :

31. We are of the view that both the courts were wrong in granting relief to the writ petitioner. Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, the State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.

26. Though we have already discarded the submission of Mr. Bhatnagar that in order to know the financial status of the family, the income of the other family members, namely, other sons, has been included in the policy of the petitioner, we again think that it is quite an irrelevant consideration. Given the contemporary social milieu, families are nuclear; not joint. A husband and wife fend for themselves and their minor children. They are no longer part of a bigger family, as in yesteryears. What is really to be tested is if the family, after the deceased's demise, are in indigent circumstances.

27. It is true that in order to evaluate the financial circumstances of the family for the purpose of offering compassionate appointment, terminal benefits, investments, monthly family income including pension and income of the family from other sources, such as agricultural land, has to be taken into consideration by the employer. It is after taking into consideration all these matters that the employer must reach a conclusion if circumstances of the family are, indeed, penurious. The assessment has to be one under the employer's policy embodied in rules or circulars. In this connection, we may harp back to the principle laid down in **Somvir Singh** *(supra)* in the most eloquent terms, to which, allusion has been made in the earlier part of this judgment.

28. Regarding the principles on which compassionate appointment proceeds, reference must be made to **Canara Bank v. Ajithumar G.K.** [4]**.** Dwelling upon the objective of compassionate appointment and what is really meant by penurious circumstances, it was held in **AjithKumar G.K.** *(supra)* :

29. The second sub-issue pertains to the real objective sought to be achieved by offering compassionate appointment. We have noticed the objectives of the scheme of 1993 and construe such objectives as salutary for deciding any claim for compassionate appointment. The underlying idea behind compassionate appointment in death-in-harness cases appears to be that the premature and unexpected passing away of the employee, who was the only bread earner for the family, leaves the family members in such

penurious condition that but for an appointment on compassionate ground, they may not survive. There cannot be a straitjacket formula applicable uniformly to all cases of employees dying-in-harness which would warrant appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in "hand-to-mouth" cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied. Such "hand-to-mouth" cases would include cases where the family of the deceased is 'below poverty line' and struggling to pay basic expenses such as food, rent, utilities, etc., arising out of lack of any steady source of sustenance. This has to be distinguished from a mere fall in standard of life arising out of the death of the bread earner.

30. The observation in Kunti Tiwary (supra) noted above seems to assume significance and we draw inspiration therefrom in making the observation that no appointment on compassionate ground ought to be made as if it is a matter of course or right, being blissfully oblivious of the laudable object of any policy/scheme in this behalf.

31. Thus, examination of the financial condition to ascertain whether the respondent and his mother were left in utter financial distress because of the death of the bread earner is not something that can be loosely brushed aside.

32. This takes us to the third sub-issue tasking us to consider whether there has been a proper and reasonable assessment of the financial condition of the family consequent upon death of the respondent's father. The order of the MD & CEO has been extracted above, verbatim. What transpires from a bare reading of such order is that the deceased left behind him his widow, the respondent and three daughters as his surviving heirs. All the daughters were married and settled. Only his spouse and son could count as dependants. The daughters were not shown to be dependent on the deceased while he was alive and in service. The respondent and his mother were residing in their own house. That apart, the deceased was 4 (four) months away from retirement on superannuation. It has been indicated in such order what the last drawn net salary of the deceased was and had he survived even after superannuation, what quantum of money would he have received as monthly pension. Also, the amount of monthly family pension being paid to the respondent's mother is indicated. Although on behalf of the respondent a contention has been raised that there has been no proper assessment of his financial condition, rather strangely, the figures referred to by the MD & CEO have not been disputed at all. We are, thus, left with no option but to proceed on the basis that the same are correct. If, indeed, the respondent's father would have received a pension amount of Rs. 6398/- and burdened to feed himself as well as his two dependants, viz. his spouse and son, the amount of family pension initially sanctioned, i.e., Rs. 4637.92 could not have, by any stretch of imagination, be seen as insufficient or inadequate for feeding two mouths. It is also not in dispute that the net terminal benefits in a sum of Rs. 3.09 lakh paid to the respondent/his mother would have been the same amount which the deceased would have received as terminal benefits after superannuation, had he been alive. Thus, it is not a case where

the death of the respondent's father brought about such dire consequence and/or disastrous outcome that the respondent and his mother would have to cope with miserable effects which, as the respondent urged, could be remedied only by offering an appointment on compassionate ground. We regret our inability to bead idem with learned counsel for the respondent.

29. What, therefore, has to be seen is if the petitioner, or so to speak, the family of the deceased were, indeed, in penurious circumstances on account of his demise. It is not, in the slightest doubt, that assessment of the deceased's family's financial condition has to be made according to rules of the policy relating to compassionate appointment and not in accordance with what the Court might think to be entitling penury for the deceased's family. This is a logical corollary of the foremost precept that compassionate appointment is no inherent right, but a concession given by the employer according to its policy framed for the purpose, if at all, and carried in its rules or circulars. The entitlement to compassionate appointment would, therefore, have to be viewed by those financial standards of the deceased's family being indeed hand-to-mouth, as the policy for compassionate appointment of the particular employer envisages. Here, the policy in vogue is carried in HRMD Circular No. 495 dated 26.03.2020, as modified by the HRMD Circular No. 550 dated 09.02.2021.

30. It is not in dispute that the petitioner's case is governed by the pre-revised scheme applicable for deaths up to 31.03.2021, except CoViD cases. There, the foremost criteria is that the total monthly income of a family, from all sources, should be less than 60% of the last drawn monthly salary, net of taxes, by the deceased employee. The respondents considered the deceased's gross monthly salary for the month of November, 2016 to be a figure of ₹22068.52 and since no tax was deducted, as the recommendations of the Committee dated 20.03.2023 would show, 60% of the last drawn salary was worked out to a figure of ₹13241.11. The deceased's widow was admittedly in receipt of a family pension from the Army in the sum of ₹20,309 per month, to which may be added the petitioner's income of ₹4000, which would lead to the figure of ₹24,309. The deceased's last notional gross salary, net of taxes, has been worked out to a figure of ₹22,068.52, 60% whereof has already been noticed to be ₹13241.11. Juxtaposed against this figure is the deceased's family's income of ₹24,309, at the time of his demise. This figure does not bring the petitioner's case where the deceased's family were eligible to have a member of theirs appointed on compassionate basis in terms of the dying-in-harness policy applicable to the respondents, as carried in circulars dated 26.03.2020 and 09.02.2021 mentioned above. The petitioner would be eligible under the respondent's compassionate appointment policy if the income of the deceased's family were ₹13241.11 or less, applying 60% of the notional gross monthly salary last drawn by the deceased's standard, stipulated under the policy, as the entitling criteria.

31. We may emphasise that a mere lowering of standard of the deceased's family from what they would have enjoyed if the deceased was around is not the test to hold the family entitled to the benefit of compassionate appointment under the respondents' compassionate appointment

policy. It has to be judged according to the standards fixed by the compassionate appointment policy in force in the employer's establishment at the time when the deceased passed away. The applicable policy clearly stipulates a monthly income much below than that which the deceased's family, by all standards, have. This is, therefore, not even a case where, despite excluding some very arbitrary and irrational figures that the Committee took into consideration for declining the petitioner's claim for compassionate appointment, we ought direct a reconsideration of that claim on the basis of income of the deceased's family, as we have determined it. On the basis of that income too, the compassionate appointment policy would not work to make the petitioner eligible for consideration, as shown above.

32. In the circumstances, we do not find any good ground to interfere with the impugned order and the resolutions of the Committees, declining the petitioner's claim for compassionate appointment.

33. In the result, this petition **fails** and stands **dismissed**.

34. There shall be no order as to costs.

(2025) 9 ILRA 413
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 31125 of 2000

Dr. Devi Prasad Dwivedi ...Petitioner
Versus
Mukhya Karyapalak Adhikari & Ors. ...Respondents

Counsel for the Petitioner:
B.N. Singh, D.S. Tripathi, H.N. Singh, P. Padia, V.D. Shukla, V.N. Singh, Vineet Kumar Singh

Counsel for the Respondents:
P.M.N. Singh, V.D. Ojha, Vineet Sankalp

विचारणीय मुद्दा

श्री काशी विश्वनाथ मन्दिर में 'आचार्य' पद की प्रकृति, और इस पद पर नियुक्ति पश्चात सेवाविस्तार न करने संबंधी आदेश की वैधानिकता।

सार-टिप्पणी (हेडनोट्स)

क. सेवा कानून श्री काशी विश्वनाथ मन्दिर ट्रस्ट याचिकाकर्ता की आचार्य पद पर 13. 01.1994 को नियुक्ति की गई मुख्य कार्यपालक अधिकारी द्वारा आक्षेपित आदेश दिनांक 12.07.2000 पारित कर यह निर्धारित किया गया कि याचिकाकर्ता का सेवा विस्तार 24.06. 1998 के बाद से नहीं हुआ। अतः इस तिथि से सेवाएं स्वयं समाप्त हो गयी इस आदेश की वैधानिकता को चुनौती दी गई मामले में 'आचार्य' पद की प्रकृति एवं प्रतिष्ठा संबंधी प्रश्न भी उठे :

अभिनिर्धारित: आदेश दिनांकित 12.07.2000 स्वयं में विरोधाभाषी है। याचिकाकर्ता न तो न्यास का कर्मचारी और न ही 60 वर्ष की उम्र के उपरान्त भी, उपरोक्त कार्य करने में कोई विधिक बाधा है, परिस्थितियों के दृष्टिगत आक्षेपित आदेश पूर्वाग्रह से ग्रसित प्रतीत होता है। 'आचार्य' का पद एक परम्परागत पद है या यह कहा जा सकता है कि यह एक 'दायित्व' है। उसकी मंदिर के किसी साधारण कर्मचारी से तुलना नहीं की जा सकती है। अतः आदेश दिनांकित 12.07.2000 खण्डित किया जाता है और इसी कारण अन्य आदेश दिनांकित 22.02. 2023 भी न्यायसंगत न होने के कारण खडित किया जाता है। (पैरा 16)

आवश्यक दिशानिर्देश : याचिकाकर्ता पूर्व की भांति ही रात्रि भोग श्रृंगार आरती का सम्पादन विधिपूर्वक करता रहेगा। जिसका कोई मानदेया नहीं होगा प्रतिवादी संख्या 1, 2 व 3 यह सुनिश्चित करेंगे कि पूजन-अर्चन सुगमता से सम्पादित होता रहे एवं याचिकाकर्ता उचित सम्मान का अधिकारी रहेगा। (पैरा 16 (क) एवं (ख))]

अन्तर्निहित कानून

काशी विश्वनाथ अधिनियम, 1983 धारा 21 उपधारा 1 एवं 3

मूल-शब्द (कीवर्ड) की सूची

श्री काशी विश्वनाथ मन्दिर ट्रस्टः आचार्य पद पर नियुक्तिः भगवान विश्वनाथ की विधि-विधान की पूजा: सांस्कृतिक क्रियाकलाप; मासिक मानद राशिः कार्यपालक समिति; नियाजनः एकान्त : छदम परिवादः जांच आख्या शिकायत पत्र; सेवा विस्तारः मानक राशि; निलम्बन; पदम विभूषणः पद्म श्री, श्रृंगार भोग; आरती; सौहादपूर्ण वातावरण; कर्मचारी; प्राकतिक न्याय का सिद्धान्तः भगवान शिवः महात्मयः महेश्वरः पूर्वाग्रहः विशिष्ट पूजा; रात्रिभोग आरती; अन्तिम न्यासः विरोधाभाषी; परम्परागत पदः दायित्व; न्यायसंगत; पूजन-अर्चन; कर्म-काण्डः उपासकगण ।

मामले का उद्भव

याचिकाकर्ता का आचार्य पर सेवा विस्तार न करने संबंधी मुख्य कार्यपालक अधिकारी द्वारा पारित आक्षेपित आदेश दिनांक 12.07.2000 |

पक्षकारों की ओर से उपस्थिति

याचिकाकर्ता के अधिवक्ता : एच. एन. सिंह, वरिष्ठ अधिवक्ता, बी. एन. सिंह, डी. एस. त्रिपाठी, वी. डी. शुक्ला, विनीत कुमार सिंह।

विपक्षीगण के अधिवक्ता : पी. एम. एन. सिंह, वी. डी. ओझा, विनीत संकल्प।

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

१. वर्तमान याचिका गत् २५ वर्षों के अन्तराल के पश्चात, आज अंतिम रूप से निस्तारित की जा रही है।

२. वर्तमान याचिका में निम्नलिखित तथ्य, पत्रावली पर उपस्थित आलेख व अभिवचनों की पृष्ठभूमि में अविवादित माने जा सकते हैं:-

क. याचिकाकर्ता, डा० देवी प्रसाद द्विवेदी को उनकी विद्ववता, कि वह कर्मकाण्ड में निष्णात, व नैष्ठिक विद्वान है और भगवान का दैनिक अभिषेक करने वालो में उच्च रहें है, के दृष्टिगत, श्री काशी विद्वत्परिषत् के अध्यक्ष ने एक पत्र दिनांकित १३.०१.१९९४, आयुक्त एवं अध्यक्ष कार्यपालक समिति, काशी विश्वनाथ मन्दिर, वाराणसी को प्रेषित करके, याचिकाकर्ता की पूर्व स्वीकृति के साथ, भगवान विश्वनाथ की विधि-विधान की पूजा उनकी देख-रेख में करने के लिए, उचित निर्णय हेतु निवेदन किया। इस निवेदन की आवश्यकता का कारण पूर्व में भगवान विश्वनाथ की पूजा की देख-रेख, कई गत् वर्षों से कर रहे, पं० बंशीधर का स्वर्गवास होना था।

ख. उपरोक्त वर्णित पत्र दिनांकित १३.०१.१९९४, का संज्ञान लिया गया और याचिकाकर्ता की सुविधानुसार और यह कि रात्रिकालीन भोग आरती के लिए कोई शास्त्री/आचार्य नियुक्त नहीं था और यह भी विचारणीय रहा कि याचिकाकर्ता को रात्रीकालीन पूजा आरती का कार्य करने में बहुत कष्ट न हो तो उक्त प्रयोजन व अन्य धार्मिक कार्यों के लिए उन्हे नियुक्त किया जा सकता है।

ग. उपरोक्त के दृष्टिगत व विचार विमर्श के उपरान्त, मुख्य कार्यपालक अधिकारी ने पत्रांक संख्या ९४१/आ०लि० ०-९४, दिनांकित २४ जून १९९४, द्वारा याचिकाकर्ता को, श्री काशी विश्वनाथ मंदिर वाराणसी में रात्रिकालीन भोग आरती को विधिवत् सम्पन्न कराने हेतु 'आचार्य' नियुक्त किया तथा उन्हें विश्वनाथ मंदिर के पुजारियों को कर्मकाण्ड आदि के प्रशिक्षण का दायित्व भी सौंपा गया। यह भी स्पष्ट किया गया कि यह नियुक्ति/व्यवस्था एक वर्ष के लिए, अस्थायी रूप से रहेगी तथा यह व्यवस्था बिना किसी कारण कभी भी समाप्त की जा सकेगी। एक मानद राशि रू० १५००/- प्रति माह भी निर्धारित करी गयी।

घ. उपरोक्त के दृष्टिगत, याचिकाकर्ता ने ०१.०७.१९९४ को उपरोक्त वर्णित पद का कार्यभार ग्रहण किया और पूर्ण निष्ठा से उक्त पूजा-पाठ श्रृंगार आरती व अन्य कार्यों का निर्वाहन प्रारम्भ कर दिया।

ङ श्री काशी विश्वनाथ मन्दिर ट्रस्ट, वाराणसी की बैठक दिनाँक २७.०५.१९९५, में विस्तृत विचार विमर्शोपरांत सर्वसम्मति से अध्यक्ष, श्री काशी विद्वत्परिषत् के, प्रस्ताव दिनांक १३.०१.१९९४, को स्वीकार किया और याचिकाकर्ता को श्रृंगार- भोग आरती सम्पन्न कराने हेतु तथा पुजारियों के परीक्षण हेतु, १५००/- रू० मासिक मानद राशि पर, 'आचार्य' के रूप में नियुक्ति की स्वीकृति प्रदान करी तथा इसी बैठक में दो और निर्णय सर्वसम्मति से पारित किए। पहला, याचिकाकर्ता का मानदेय १५०० रू० मासिक से बढाकर ३००० रू० मासिक किया गया और दूसरा उनका कार्यकाल ३ वर्षों के लिए बढ़ाया गया।

च. उपरोक्त बैठक में याचिकाकर्ता के कार्यों की सराहना भी की गयी, कि मन्दिर के प्रशासन, प्रगति एवं मंदिर के

सांस्कृतिक क्रिया कलापों में उनका सर्वयोग व उत्साह रहा एवं उनकी निष्ठा, असाधारण एवं अनिर्वचनीय रही। इसके उपरांत पत्रांक दिनांकित २० नवम्बर १९९४ के द्वारा याचिकाकर्ता द्वारा उपरोक्त दायित्वों का निर्वाहन को प्रमाणित भी किया और कालान्तर में आयुक्त एवं अध्यक्ष, कार्यपालक समिति श्री काशी विश्वनाथ मन्दिर, वाराणसी द्वारा एक 'प्रशस्ति पत्र' दिनांकित २५.०९.१९९९, याचिकाकर्ता को प्रदान किया।

छ. काशी विश्वनाथ मन्दिर ट्रस्ट, वाराणसी की ३७वीं न्यास परिषद बैठक दिनाँक १० नवम्बर १९९८ में सर्वसम्मति से याचिकाकर्ता के द्वारा दिये गये प्रार्थना पत्र पर विचारोपरान्त यह निर्णय किया गया कि उनके नियुक्ति पत्र में अंकित एक वर्ष की समय सीमा समाप्त की जायें व उनका मानदेय रू० ३०००/- से बढाकर रू० ३५००/- प्रतिमास किया जाने का निर्णय लिया गया तद्नुसार स्वीकृति भी प्रदान करी गयी। साथ ही साथ खण्डित मूर्तियों आदि का विधिपूर्वक विसर्जन करने के लिए भी याचिका कर्ता व एक अन्य को अधिकृत किया गया। नियुक्ति आदेश से एक वर्ष की समयावधि को समाप्त करने का निर्णय याचिका कर्ता को मुख्य पालक अधिकारी ने पत्र दिनांकित ०३.१२.१९९८ द्वारा सूचित भी किया। यहाँ यह उल्लिखित करना आवश्यक है कि याचिकाकर्ता के नियुक्ति पत्र में 'एक वर्ष' की समयावधि समाप्त करने का निर्णय, मानदेय बढाने का निर्णय व अन्य कार्यों के सम्पादन के लिए अधिकृत करना, का तात्पर्य, याचिकाकर्ता का नियोजन बनाए रखना तो हो सकता है परन्तु इन सबका ऐसा कोई भी विपरीतार्थक तात्पर्य नहीं हो सकता कि याचिकाकर्ता का नियोजन विस्तार नहीं किया गया था और इस कारण उसका नियोजन समाप्त हो गया। अन्यथा उक्त सभी निर्णय व्यर्थ और बेमतलब हो जायेंगे और यह कि इसके उपरान्त भी याचिकाकर्ता अविवादित रूप से पूजा अर्चना करता रहा।

ज. प्रतिवादी संख्या ५ जो तत्समय मुख्य सचिव के पद पर कार्य कर रहे थे। अचानक कथित रूप से विश्वनाथ मंदिर में आकर एक दिन लम्बे समय तक अनुष्ठान करना चाहते थे, जिसके लिए एकान्त की आवश्यकता थी, जो मंदिर के सामान्य भक्तों के दर्शन रोक कर, देने में कठिनाई थी। इस कारण याचिकाकर्ता ने उस अधिकारी से ऐसी पूजा न करने का आग्रह किया, जो उस अधिकारी को नागवार गुजरा और याचिकाकर्ता के विरूद्ध, पूर्वाग्रह से ग्रसित होकर एक छद्म परिवादी को खडा कर, एक शिकायत पत्र दिनांकित ०५.०२.२००० प्रेषित करवाया गया कि याचिकाकर्ता की नियुक्ति अवैध है और मंदिर के क्रिया-कलापों में वित्तीय अनियमिततायें हुई है।

झ. उक्त शिकायत पत्र का संज्ञान लिया गया और याचिकाकर्ता के विरूद्ध, उसकी पीठ के पीछे एक जाँच करायी गयी और जाँच आख्या को न्यास की बैठक दिनांक २२.०६.२००० में विचारण हेतु रखा गया, जिसमें यह निर्णय लिया गया कि काशी विश्वनाथ अधिनियम, १९८३ की धारा २१ (१) तथा २१ (३) के अन्तर्गत, मुख्य कार्यपालक अधिकारी, कर्मचारी की नियुक्ति करने तथा उन्हे हटाने में सक्षम है और उसको याचिकाकर्ता की सेवायें समाप्त करने के सम्बन्ध में अन्तिम निर्णय लेने के लिए प्राधिकृत किया गया। यहाँ यह भी उल्लिखित करना आवश्यक है कि प्रतिवादी ने कभी भी याचिकाकर्ता को मंदिर का कर्मचारी नहीं माना है।

ञ. शिकायती पत्र के आधार पर जाँच आख्या की प्रति याचिकाकर्ता को उपलब्ध नहीं करायी अपितु शिकायत पत्र की एक प्रति याचिकाकर्ता को मुख्य कार्यपालक अधिकारी ने पत्र दिनांकित २७.०५.२००० के माध्यम से प्रेषित की। याचिकाकर्ता ने उसका एक विस्तृत उत्तर दिनांकित १५.०६.२००० को प्रेषित किया।

ट. उपरोक्त परिस्थितियों में मुख्य कार्यपालक अधिकारी ने आदेश दिनांकित १२.०७.२००० द्वारा यह निर्धारित किया कि याचिकाकर्ता का सेवा विस्तार २४.०६.१९९८ के बाद नहीं हुआ। अतः उक्त तिथि से उनकी सेवायें स्वतः समाप्त हो गयी। साथ ही साथ उनको दी गयी मानक राशि भी विधि सम्मत नहीं थी और विस्तृत परीक्षण के बाद वसूली हेतु अलग से विस्तृत आदेश पारित करने की स्वतंत्रता रखी। आदेश के मुख्य अंश निम्न है:

''मैने अखिल भारतीय श्री पण्डित परिषद का शिकायती प्रार्थना पत्र , डा० देवी प्रसाद द्विवेदी द्वारा दिए गए स्पष्टीकरण एवं अन्य साक्ष्य तथा शासन द्वारा करायी गयी जांच आख्या का अवलोकन किया तथा श्री द्विवेदी को व्यक्तिगत पत्रावली पर लगे सभी अभिलेख का परीक्षण किया और उस पर विचार किया। डा० देवी प्रसाद द्विवेदी ने अपने स्पष्टीकरण दिनांक 15.06.2000 में स्वयं स्वीकार किया है कि " श्री काशी विश्वनाथ मन्दिर कार्यालक समिति की २२ वी बैठक दिनांक १५.०४.९४ में सर्वसम्मति से मन्दिर आचार्य पद पर मुझे नियुक्त किया गया तथा उसी बैठक में मुझे भोग-श्रंगार आरती सम्पन्न कराने तथा पुजारियों को प्रशिक्षण देने हेतु आचार्य के रूप में नियुक्ति की गयी। नियुक्ति के एक वर्ष बाद मन्दिर आचार्य पद पर मेरी नियुक्ति तीन वर्ष के लिए पुनः बढा दी गयी। वह तीन वर्ष की अवधि २८ को समाप्त हो गयी। मैने मन्दिर आचार्य पद पर सेवा एवं संतुष्टि हेतु प्रार्थना पत्र दे दिया। किन्तु सेवा स्थायीकरण का आदेश अभी तक निर्गत नहीं हुआ। मुख्य कार्यपालक अधिकारी से पूछने पर उन्होने कहा कि आदेश निकले या न निकले उससे आपका क्या मतलब आप मन्दिर आचार्य पद पर नियमों के तहत स्थायी थे। डा० देवी प्रसाद द्विवेदी के उपरोक्त कथन में बल नहीं है। न्यास परिषद की

३७वीं बैठक दिनांक १०.११.९८ के एजेण्डा मद १४ अन्य विषय के बिन्दु (२) में डा० देवी प्रसाद द्विवेदी के स्थायीकरण पर कोई विचार नही हुआ और न ही न्यास परिषद ने स्थायीकरण करने का कोई निर्णय लिया। अपितु डा० देवी प्रसाद द्विवेदी के द्वारा दिए गए प्रार्थना पत्र पर विचारोपरान्त उसके नियुक्ति आदेश में त्रुटिपूर्ण ढंग से अंकित एक वर्ष की समय सीमा को समाप्त करने का निर्णय लिया गया। न्यास परिषद के निर्णय से स्पष्ट पता चलता है कि दिनांक १०.११.९८ को न्यास परिषद ने डा० द्विवेदी के सेवा विस्तार करने का ही कोई निर्णय लिया और न ही स्थायीकरण किया गया। पत्रावली के अवलोकन से यह स्पष्ट है कि डा० देवी प्रसाद द्विवेदी की नियुक्ति २४.६.९४ को श्री आर०के० सिंह, मुख्य कार्यपालक अधिकारी द्वारा केवल एक वर्ष के लिए की गयी थी और पुनः उनके सेवा के विस्तार ३ वर्ष के लिए किया गया। इस प्रकार अन्तिम रूप से डा० देवी प्रसाद द्विवेदी का कार्यकाल दिनांक २४.०६.९८ को समाप्त हो गया। दिनांक २४.०६.९८ के पश्चात न तो कोई सेवा विस्तार किया और न ही डा० द्विवेदी के पुर्ननियुक्ति का कोई आदेश ही किए गए। अतः उनकी सेवा अवधि स्वतः दिनांक २४.०६.९८ को निष्प्रभावी हो समाप्त हो गयी।''

ठ. उपरोक्त आदेश वर्तमान याचिका में आक्षेपित किया गया है।

३. इस न्यायालय द्वारा पारित, अंतरिम आदेश दिनांकित २३.०८.२००२ द्वारा आक्षेपित आदेश को निलम्बित कर दिया गया। अंतरिम आदेश का पालन हुआ और याचिकाकर्ता पूर्व की भांति पूजा अर्चना इत्यादि करता रहा।

४. कालान्तर में याचिकाकर्ता को पद्म विभूषण व पद्म श्री से सम्मानित किया गया और वर्ष २०१६ से २०१८ के मध्य वो उत्तर प्रदेश लोक सेवा आयोग का सदस्य भी रहा। इसके उपरान्त भी याचिकाकर्ता अपना दायित्व निभाता रहा।

५. अंतरिम आदेश के रहते हुए व इस न्यायालय की बिना कोई अनुमति लिये, काशी विश्वनाथ न्यास परिषद ने १०४वी बैठक दिनांक २२.०२.२०२३ में यह निर्णय लिया कि, चूँकि याचिकाकर्ता की उम्र ६० वर्ष से अधिक है, इसलिए न तो उनको मानदेय दिया जा सकता है और न ही उनको कार्यरत रखा जा सकता है, आदेश का सारांश निम्न हैः-

''इस प्रकार उपरोक्त तथ्यों के आलोक में यह स्पष्ट है कि डा० देवी प्रसाद द्विवेदी की नियुक्ति २२.०६.१९९४ को तत्कालीन मुख्य कार्यपालक अधिकारी द्वारा अस्थायी रूप से एक वर्ष के लिए की गयी थी जिसे तीन वर्ष तक सेवा विस्तार दिया गया। श्री द्विवेदी की नियुक्ति बिना पद सृजन के की गयी थी। डा० देवी प्रसाद द्विवेदी की नियुक्ति दिनांक २४.०६.१९९८ को स्वतः समाप्त हो गयी। शिकायत होने के क्रम में शासन द्वारा करायी गयी जाँच में आरोप सत्य पाये जाने के कारण तत्कालीन मुख्य कार्यपालक अधिकारी द्वारा श्री द्विवेदी के विरूद्ध धनराशि वसूली के आदेश पृथक से निर्गत करने के आदेश दिये गये थे। श्री द्विवेदी द्वारा मा० उच्च न्यायालय से अधिवक्ता की अनुपस्थिति के क्रम में स्टे आर्डर प्राप्त कर लिया गया। श्री द्विवेदी दिनांक २०.१०.२०१६ को अपनी अधिवर्षता आयु पूर्ण कर चुके तथा मा० उच्च न्यायालय के वसूली रोकने के आदेश का अनुपालन किया जा चुका है। ऐसी स्थिति में न्यास परिषद के निर्मय के आलोक में दिनांक २०.१०.२०१६ (अधिवर्षता आयु ६० वर्ष) के उपरान्त श्री द्विवेदी का किसी भी प्रकार से कोई मानदेय व अधिकार नहीं बनता है। श्री द्विवेदी की नियुक्ति लोक सेवा आयोग में होने के कारण इनको दिये जाने वाले मार्ग व्यय का भुगतान सितम्बर २०१६ तक किया गया है। अक्टूबर २०१६ मार्ग व्यय का भुगतान अवरूद्ध कर दिया गया। श्री द्विवेदी द्वारा अपने प्रत्यावेदन से दिनांक ०४.११.२०१८ को कार्यभार ग्रहण करना बताया गया है। परन्तु वर्तमान में उपलब्ध पत्रावली में कोई रिकार्ड नहीं है।

१. डा० देवी प्रसाद द्विवेदी की ६० वर्ष की आयु २० अक्टूबर, २०१६ को ही पूर्ण हो चुकी है।

२. श्री द्विवेदी की नियुक्ति बिना पद सृजन के तथा बिना सक्षम अधिकारी के की गयी थी।

३. श्री काशी विश्वनाथ मंदिर न्यास के अन्तर्गत अधिग्रहण के समय जिन पुजारीगण के प्रशिक्षण का उल्लेख किया गया है, वह स्मस्त पुजारीगण सेवानिवृत्त हो चुके है। वर्तमान में जो भी पुजारी कार्यरत है सभी आचार्य उच्च योग्यता धारी एवं समस्त प्रकार के पूजा, आरती इत्यादि में दक्ष है। वर्तमान में कोई प्रशिक्षण देने की कोई आवश्यकता नहीं है।

अतः उक्त परिस्थितियों के आलोक में न्यास परिषद यह निर्णय लेता है कि श्री द्विवेदी के प्रकरण में मा० न्यायालय के आदेश का अनुपालन न्यास परिषद द्वारा किया जा रहा है। वर्तमान में सभी प्रकार के कर्मचारियों की सेवा शर्तों के अनुसार अधिकतम ६० वर्ष की आयु ही अधिवर्षता आयु नियत है। चूँकि श्री द्विवेदी अपनी अधिवर्षता आयु ६० वर्ष पूर्ण कर चुके है, इसलिए न्यास परिषद के अन्तर्गत इन्हे कार्यरत नहीं रखा जा सकता। तद्नुसार श्री द्विवेदी के प्रत्यावेदन पर निर्णय लिया जाता है।''

६. उपरोक्त परिस्थितियों में याचिकाकर्ता ने एक अवमानना आवेदन (कंटेम्पट अपलीकेशन,सिविल) संख्या १६६३ सन् २०२३, इस न्यायालय में दाखिल करी कि उपरोक्त निर्णय इस न्यायालय के द्वारा पारित अंतरिम आदेश दिनांकित २३.०८.२००२ के विपरीत है। उक्त अंतरिम आदेश की भी अवहेलना हुई है। अतः यह अवमानना का मामला बनता है। उचित पीठ ने आदेश दिनांकित ०३.०३.२०२३ द्वारा यह आदेश दिया कि याचिकाकर्ता पूर्व की भांति श्रृंगार भोग आरती (रात्रि ८ से १० बजे तक) काशी विश्वनाथ मंदिर में करता रहेगा। काशी विश्वनाथ न्यास के विद्वान अधिवक्ता ने भी उक्त आदेश के प्रति सहमति दी। ऐसा प्रतीत होता है याचिकाकर्ता ने उक्त आदेश का पालन या तो स्वः इच्छा से या अन्य परिस्थितियों के कारणवश नहीं किया और श्रृंगार आरती नियमित रूप से प्रतिदिन नहीं करी।

७. उपरोक्त पृष्ठभूमि में इस न्यायालय ने एक आदेश दिनांकित २६.०८.२०२५ पारित करा कि सभी पक्षकार सौहार्दपूर्ण वातावरण में बात कर सहमति के आधार पर कोई निर्णय लें।

८. पक्षकारों के विद्वान अधिवक्तागण एवं याचिकाकर्ता जो आज न्यायालय में स्वयं उपस्थित हैं उन्होने यह कथन किया कि पक्षकारों ने दो बार आपस में सौहार्दपूर्ण वातावरण में वार्ता की। पहले प्रयागराज में, फिर वाराणसी में और यह भी बताया गया, कि आपस में लिया गया कोई भी निर्णय, सर्वप्रथम न्यास की बैठक में स्वीकृत कराना होगा और इसलिए यह उचित होगा कि पक्षकारों के पक्ष का श्रवण कर, यह न्यायालय, आदेश पारित करे। जिससे उसे न्यास की बैठक में स्वीकृत कराने की आवश्यकता ही न रह जाये।

९. उपरोक्त पृष्ठभूमि में याचिकाकर्ता को, उसके विद्वान वरिष्ठ अधिवक्ता श्री एच.एन.सिंह को व उनके सहयोगी विद्वान अधिवक्ता श्री विनीत कुमार सिंह को , प्रतिवादी सं० १,२,३ के विद्वान अधिवक्ता श्री विनीत संकल्प को व प्रतिवादी संख्या ४ के विद्वान अधिवक्ता के प्रतिवेदन को ध्यानपूर्वक श्रवण किया। प्रतिवादी सं० ५ की तरफ से कोई अधिवक्ता प्रस्तुत नहीं हुआ।

१०. प्रतिवादी का कथन रहा है कि याचिकाकर्ता उसका कर्मचारी नहीं है और उसकी नियुक्ति 'आचार्य' के रूप में वर्ष १९९८ के बाद विस्तारित नहीं की गयी और मुख्य कार्यपालक अधिकारी 'अधिनियम १९८३' की धारा २१ (१) तथा २१ (३) के अंतर्गत याचिकाकर्ता के विरूद्ध आदेश पारित करने का अधिकार रखता है। यह अविवादित है, याचिकाकर्ता के विरूद्ध कार्यवाही एक शिकायत पत्र को संज्ञान में लेते हुए प्रारम्भ करी गई थी। उनका यह भी कथन रहा है कि आक्षेपित आदेश पारित करने के पूर्व प्राकृतिक न्याय के सिद्धान्तो का पूर्ण परिपालन किया और कार्यवाही पूर्वाग्रह से ग्रसित नहीं थी। इस न्यायालय के अंतरिम आदेश के जीवान्त होने के बावजूद, क्योकि याचिकाकर्ता ६० वर्ष की उम्र से अधिक हो गये थे, केवल इस कारण से ही उनको अग्रिम कार्य न कराने का आदेश दिनांक २३.०२.२०२५ को पारित किया गया था।

११. श्री विनीत संकल्प, न्यास के विद्वान अधिवक्ता ने अनुदेश के आधार पर यह कथन किया कि न्यास को याचिकाकर्ता के विद्वता, उनकी निष्ठा व उनके मंदिर में मनोयोग से पूजा अर्चना करने के विषय में किंचित भी संदेह नहीं है और न्यास इस न्यायालय के द्वारा पारित किसी भी निर्णय का सम्मान करेगा।

१२. याचिकाकर्ता स्वयं न्यायालय कक्ष में उपस्थित हैं और न्यायालय की अनुमति से उन्होनें अपना पक्ष न्यायालय के समक्ष, भावुकता परन्तु गम्भीरता से प्रस्तुत किया। भगवान शिव की महात्मय के विषय में उन्होने उच्चारण किया किः-

"तव तत्त्वं न जानामि कीदृशोऽसि महेश्वर।"

"यादृशोऽसि महादेव तादृशाय नमो नमः॥"

जिसका अर्थ है " हे महेश्वर ! मैं आपके तत्व (रहस्य) को नहीं जानता हूं कि आप कैसे हो । परन्तु हे महादेव ! आप जिस किसी तरह के हो, जैसे हो, वैसे के वैसे लगन आपको मैं बार-बार प्रणाम करता हूँ।"

१३. याचिकाकर्ता ने कहा कि उन्होने आचार्य के रूप में मन्दिर में अपनी सेवायें बिना किसी भेद-भाव से, सम्पूर्ण विधि-विधान से, नियमित रूप से पूजा अर्चना करके दी और मानदेय भी न्यास के बार-बार आग्रह करने के उपरान्त ही स्वीकार किया। वह कभी भी न्यास का कर्मचारी नहीं रहा। उसको, उसकी विशेषताओं के कारण आचार्य पद पर कुछ विशेष कार्यों के सम्पादन हेतु नियुक्त किया गया। विशेष रूप से रात्रि भोग आरती को विधिवत् सम्पादित करने के लिए, जो उसने मनोयोग से पूर्ण की। आक्षेपित आदेश, पूर्वाग्रह से ग्रसित है, क्योंकि तत्कालीन एक वरिष्ठ शासकीय अधिकारी को उन्होने एक विशिष्ट पूजा करने से रोका था, क्योकि उसके कारण मंदिर को खाली नहीं कराया जा सकता था, जबकि भक्त दर्शन के लिए प्रतीक्षा कर रहे थे। वह आज भी भगवान विश्वनाथ की रात्रि भोग आरती, मनोयोग से करना चाहते हैं, जब

तक उसका शरीर उनका साथ दे। वह किसी भी पदाधिकारी से किसी भी प्रकार की शिकायत का भाव नहीं रखते हैं। मात्र उचित सम्मान के प्रार्थी है।

१४. याचिकाकर्ता के विद्वान वरिष्ठ अधिवक्ता श्री एच. एन. सिंह ने प्रतिवेदन किया कि प्रतिवादी संख्या पांच ने कोई प्रत्युत्तर नहीं दिया है एवं प्रतिवादी संख्या - १,२ एवं ३ के द्वारा दाखिल प्रतिशपथ पत्र में पूर्व में उल्लेखित घटना को बहुत सामान्य रूप से अस्वीकार किया है एवं अन्य कारकों के दृष्टिगत वो घटना ही आक्षेपित आदेश पारित करने का कारण हो सकती है। विधिक रूप से आक्षेपित आदेश पारित नहीं किया जा सकता था। आक्षेपित आदेश तथ्यात्मक दृष्टि से भी विकृत है। जब याचिकाकर्ता अविवादित रूप से न्यास का कर्मचारी ही नहीं है तो अधिनियम- १९८३ के उपबन्ध उस पर लागू ही नहीं हो सकते हैं। अन्तिम न्यास की बैठक में लिये गये निर्णयों का पूर्णतः विपरीत अर्थ, आक्षेपित आदेश में दिया गया है जो न्यायसंगत नहीं है। इसी प्रकार याचिकाकर्ता ६० वर्ष का हो गया है मात्र इस कारण 'आचार्य' का कार्य नहीं कर सकता, यह निर्णय भी न्यायसंगत नहीं है।

१५. प्रतिवादी सं० १,२ व ३ के विद्वान अधिवक्ता श्री विनीत संकल्प ने आक्षेपित आदेश का समर्थन करने की असफल कोशिश करी, क्योकि उपरोक्त वर्णित तथ्य उनके किसी भी तर्क के विरोध में है। उन्होनें पुनः निवेदन किया कि यह न्यायालय वर्तमान प्रकरण की परिस्थितियों के दृष्टिगत जो आदेश पारित करेगा, उसका यथायोग सम्मान किया जायेगा।

१६. उपरोक्त के संदर्भ में इस न्यायालय का मत है कि याचिकाकर्ता के पक्ष में दिये तर्क में बल है कि आक्षेपित आदेश तथ्यात्मक व विधिक दोनों रूपों में त्रुटिपूर्ण है। यह भी निर्धारित किया जा सकता है कि आदेश दिनांकित १२.०७.२००० स्वयं में विरोधाभाषी है। याचिकाकर्ता न तो न्यास का कर्मचारी और न ही ६० वर्ष की उम्र के के उपरान्त भी, उपरोक्त कार्य सम्पादित करने में कोई विधिक बाधा है परिस्थितियों के दृष्टिगत आक्षेपित आदेश पूर्वाग्रह से ग्रसित भी प्रतीत होता है। 'आचार्य' का पद एक परम्परागत पद है या यह कहा जा सकता है कि यह एक 'दायित्व' है। उसकी मंदिर के किसी साधारण कर्मचारी से तुलना नहीं की जा सकती है। अतः आदेश दिनांकित १२.०७.२००० खण्डित किया जाता है और इसी कारणवश अन्य आदेश दिनांकित २२.०२.२०२३ भी न्यायसंगत न होने के कारण खण्डित किया जाता है और समस्त परिस्थितियों व सभी पक्षों के प्रतिवेदन के दृष्टिगत वर्तमान याचिका निम्न निर्देशों के साथ निस्तारित की जाती है:-

क. याचिकाकर्ता पूर्व की भांति ही रात्रि भोग श्रृंगार आरती का सम्पादन विधिपूर्वक करता रहेगा। जिसका कोई मानदेय नहीं होगा।

ख. प्रतिवादी संख्या १,२ व ३ यह सुनिश्चित करेंगे कि पूजन-अर्चन सुगमता से सम्पादित होता रहे एवं याचिकाकर्ता उचित सम्मान का अधिकारी रहेगा।

ग. याचिकाकर्ता यदि चाहे तो सप्ताह में तीन दिन (सोमवार, बुद्धवार व गुरूवार) को ही रात्रि भोग श्रृंगार आरती करने का निर्णय ले सकता है और इसके लिए वो प्रतिवादी को २ सप्ताह के भीतर सूचित करेगा।

घ. रात्रि भोग श्रृंगार आरती के समय याचिकाकर्ता अपने साथ एक सहयोगी रख सकता है बशर्ते वो कर्म-काण्ड व पूजा-पद्यति का उचित ज्ञाता हो।

ङ. प्रतिवादी संख्या १,२ व ३ यदि निर्धारित करना चाहें तो मास में एक दिवस व कुछ समय निश्चित कर सकेंगे, जिससे याचिकाकर्ता, उपासकगणों को कर्म-काण्ड से सम्बन्धित शिक्षा दे सके। ऐसा आयोजन मंदिर परिसर में ही होगा।

च. याचिकाकर्ता स्वः इच्छा से रात्रि भोग श्रृंगार आरती का सम्पादन कभी भी त्याग सकते है, उसका स्वास्थ्य एक कारण हो सकता है। ऐसा करने के पूर्व वह न्यास को सूचित करेगा।

छ. याचिकाकर्ता से अपेक्षा रहेगी कि वो एक वरिष्ठ अनुभवी व्यक्ति होने के नाते अपने उक्त कृत्यों में सरलता बनाये रखेगा।

१७. उपरोक्त निर्देशों के संदर्भ में किसी विवाद की दशा में, जब विवाद आपसी बातचीत से सुलझ न पायें तो कोई भी पक्षकार, इस न्यायालय में पुर्नविचार याचिका दाखिल करने के लिए स्वतंत्र रहेगा।

(2025) 9 ILRA 418
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 48129 of 2017

Satyaveer Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Niklank Kumar Jain, Siddharth Khare

Counsel for the Respondents:
B.P. Singh, C.S.C., Ram Prasad Dubey

Issue for Consideration

1. Validity of termination of appointment obtained by using fraudulent educational certificate.
2. Availability of protection provided under Article 311 of the Constitution of India, when the appointment was not made legally.

Headnotes

(A) Service law – Termination – Assistant Teacher – Principle of natural justice – Complaint of using forged educational certificate was made – Verification report of university mentioned that degree as claimed has not been issued by it – Relevancy – No full fledged department enquiry was held – No opportunity of hearing was granted – Effect :

Held : An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine **–** Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. [Paras 34 and 35]

Held further : Where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void ab initio. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise – No opportunity is to be granted to a person who has played fraud while seeking appointment. [Paras 38 and 40]

(B) Service law – Constitution of India – Article 311 – Right of opportunity of hearing – Entitlement – Appointment obtained by using forged certificate – Protection provided under Article 311, extent of its availability :

Held : Protection under Article 311 of the Constitution of India is available only to a person who has been validly and legally appointed to any post under the Union or a State. The Constitutional safeguard presupposes a lawful entry into a service. Where an incumbent secures an appointment by suppression of material facts or by producing forged and/or fabricated documents such an appointment is void ab initio and confers no right to hold the post. [Para 43] (E-1)

Case Law Cited

Special Appeal Defective No. 110 of 2014, Smt. Parmi Maurya v. State of U.P. and 2 Others decided on 31.01.2014; Abhishek Prabhakar Awasthi Vs. New India Assurance Co. Ltd & Others, 2014 (6) ADJ 641; Writ A No. 19199 of 2023, Narsing Narain Singh vs. State Public Service Tribunal; SLP (C) No. 8788-8789 of 2023, Sandeep Kumar v. G.B. Pant Institute, decided on 16.04.2024; Special Appeal Defective No. 110 of 2014, Smt. Parmi Maurya v. State of UP and Others; Riazul Hasan v. State of UP and Others, (2024) 6 ALJ 542; Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319; Usha Singh v. State of U.P. and another, 2017 SCC Online All 6109; Nageswar Sonkesri v. State of M.P. and another, 2020 SCC Online MP 4461; Vijay Krishnarao Kurundkar and another v. State of Maharashtra and Others, 2020 SCC Online SC 834; Jainendra Singh v. State of U.P., 2012 (8) SCC 748; R. Vishwanatha Pillai v. State of Kerala and others, (2004) 2 SCC 105; Ishwar Dayual Sah v. State of Bihar, 1987 Lab IC 390; Rita Mishra v. Director, Primary Education, 1988 Lab IC 907; Union of India v. Prohlad Guha etc., 2024 SCC OnLine SC 1865; Special Appeal No. 26 of 2007, Vinay Kumar Shahi v. Deon D. Upadhyay & Ors., 2010:AHC118883-DB; Special Appeal No. 211 of 2011, Poonam Shukla v. State of U.P. & Others, 2015 LawSuit(AII) 3864; Kamlesh Kumar Nirankari v. State of U.P. & 2

Ors., 2025 0 Supreme (All) 3053; R. Vishwanatha Pillai v. State of Kerala & Ors, 2004 (2) SCC 105; Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100; Writ A No. 11846 of 2025, Virendra Kumar Mishra v. State of U.P. and 4 Ors. as decided on 19.08.2025**– referred to.**

List of Acts

Constitution of India – Article 311; Uttar Pradesh Basic Education Staff Rules, 1973; Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999

List of Keywords

Termination; Appointment; Political pressure; Forged educational certificate; Departmental proceeding; Enquiry; Cancellation of appointment; Verification; Candidature; Public employment; Integrity and honesty; Misrepresentation; Opportunity of hearing; Constitutional safeguard; Suppression of material facts.

Case Arising From

Order dated 16.09.2017 passed by the Basic Shiksha Adhikari terminating the service of the petitioner.

Appearances for Parties

Advs. for the Petitioners : Niklank Kumar Jain, Siddharth Khare

Advs. for the Respondeents : B.P.Singh, C.S.C., Ram Prasad Dubey

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Mr. Siddharth Khare, learned counsel for the petitioner, Mr. Ram Prasad Dubey, learned counsel for respondent, Basic Education Officer, and Mr. Shailendra Singh, learned counsel for State-respondents.

2. The instant petition has been filed for following relief:

"i. Issue a writ, order of direction in the nature of certiorari to quash the impugned order dated 16.09.2017 passed by respondent no. 2/B.S.A., District Badaun against the petitioner."

3. Brief facts of the case are that the petitioner was appointed as an Assistant Teacher in Junior High School, Dhimarpura, Block Samrer, District Badaun on 04.02.2011. On some complaint filed by respondent no. 3- Chandrabhan Singh, regarding appointment of the petitioner on the basis of false educational certificates the District Basic Education Officer, Badaun, vide order dated 23.09.2016, stopped salary of the petitioner until inquiry being conducted. Thereafter, by order dated 07.04.2017, respondent no. 2 issued order for release of the petitioner's salary.

4. A Civil Misc. Writ Petition No. 17802 of 2017 was filed by respondent no. 3 before this Hon'ble Court regarding appointment of the petitioner being sought on the basis of false educational certificate and this Court by order dated 27.04.2017 by requiring respondent no. 2 therein to summon the original records and examine all the educational qualification certificates of the petitioner, and thereafter to get them verified from institutions concerned. A direction was also issued to take a final decision, in accordance with law by means of a reasoned speaking order after affording opportunity of hearing to the petitioner.

5. Notice was issued to the petitioner on 03.06.2017 to which a reply was submitted on 14.06.2017 along with all educational certificate mentioning therein that the complainant was enemical to him due to election dispute and therefore has made a false complaint against him.

6. The counsel for the petitioner contends that the petitioner had passed

High School Examination in the year 1994 with roll number 057126, photocopy of the mark sheet as well as high school certificate is annexed as Annexure No. 6 to the instant petition, Intermediate examination in the year 1996 with roll number 029165, photocopy of the mark sheet as well as Intermediate certificate is annexed as Annexure No. 7 to the instant petition, B.Com Part- 3 examination in the year 2003 with roll number 093763 from Dr. Bhimrao Ambedkar University Agra, photocopy of duplicate statement of marks of B.Com Part-3 as well as certificate issued by Dr. Bhimrao Ambedkar University Agra is annexed as Annexure No. 8 to the instant petition B.Ed. Examination in the year 2005 with roll number 5176138 from Dr. Z.H. Degree College, Etah, photocopy of the B.Ed mark sheet is being annexed as Annexure No. 9 to the instant petition. The petitioner has also qualified Special B.T.C. Training 2007 in the year 2010, photocopy of the certificate of Special B.T.C. Training dated 03.11.2010 is also annexed as Annexure No. 10 to the instant petition.

7. Despite the aforesaid, the respondent no. 2 has proceeded to pass the order dated 16.09.2017 terminating the services of the petitioner while deciding the representation of respondent no. 3 in compliance of order of this Court, dated 27.04.2017, passed in writ petition no. 17802 of 2017. Learned counsel for the petitioner submits that the order impugned is arbitrary, illegal and is based on the complaint as made by respondent no. 3 under influence of political pressure.

8. On the basis of telephonic information given by the complainant to the District Basic Education Officer that the verification of the educational documents of B.Com and B.Ed as submitted by the petitioner were forged on account of which the District Basic education officer issued letter dated 06.09.2017 to the office of Registrar of Dr. Bhimrao Ambedkar University Agra and only on the basis of oral information as given by clerk Sunil Kumar Srivastava who after perusal of the records orally informed that no verification was done and letter dated 16.08.2017 was also not issued from his office. By order dated 16.09.2017 respondent no. 2, only on the aforesaid facts, terminated the services of the petitioner and ordered to recover the amount of salary from the petitioner which is illegal.

9. The order dated 16.09.2017 has been passed without going through the educational certificates of the petitioner, as produced along with reply, and without giving opportunity of hearing to the petitioner, therefore, the order is arbitrary and in violation of principles of natural justice. The respondent no. 2 has passed the order dated 16.09.2017 relying upon the complaint as made by respondent no. 3 who was enmical to him and has proceeded to terminate his services which is unjustified.

10. Learned counsel for the petitioner submits that the petitioner has not done any forgery nor filed any forged certificate and has placed the certificates along with the writ petition to prove the same. Therefore the order terminating his services is bad and unsustainable in the eyes of law. Placing reliance upon a judgement in the case of **Smt. Parmi Maurya Vs. State of U.P. and 2 Others** passed in **Special Appeal Defective No. - 110 of 2014** as decided on 31.01.2014 submits that the disciplinary inquiry/full fledged inquiry as

required under law has not been conducted prior to passing of the order dated 16.09.2017 terminating his services.

11. The counsel for the petitioner further submits that by letter dated 16.08.2017, which finds mention in para no. 11 of the counter affidavit, speaks about verification of two degrees possessed by the petitioner. Hence no forgery has been conducted and the petitioner's services have been terminated on a nonexistent ground. The controversy pertaining to bachelor of education degree awarded by Dr. Bhimrao Ambedkar University Agra during academic session 2004-2005 is subject matter of Special Leave Petition before Supreme Court in which interim orders have been granted, therefore, once the B.Ed degree of the petitioner has not been annulled till date it cannot be said that he has committed any forgery. On the aforesaid grounds the impugned order is liable to be quashed.

12. He has also submitted that on 12.10.2017 the matter was heard and the following order was passed:-

"Issue notice to the second and third respondent.

Four weeks' time is allowed to the respondents to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

Petitioner was appointed as Assistant Teacher at Junior High School, Dhimarpura, Block Samrer, District Badaun, on 4 February 2011. On a complaint made by the third respondent, the B.Com. degree of the petitioner was got verified from Dr. Bhimrao Ambedkar University, Agra, which was duly certified by the Registrar on 16 August 2017. Accordingly, the High School and Intermediate mark sheets were also duly certified by the Regional Officer of the Board, at Meerut, by communication dated 25 May 2017. Thereafter, the impugned order would record that the second respondent, District Basic Education Officer, District Badaun, on telephonic information of the third respondent i.e. complainant, personally visited the University and on the information of the clerk dealing with the record that the letter dated 6 September 2017 was not issued by the office, nor it has been signed by the Registrar, the impugned order has been passed. But the impugned order would not record as to whether any enquiry was made regarding the genuineness and validity of the certificates pertaining to the petitioner. The course adopted by the second respondent is a procedure unknown to Government office, therefore, it creates doubt about the reasoning in rejecting the certificate of the petitioner merely on a statement of a clerk.

Learned counsel for the second respondent prays for and is granted two weeks' time to file counter affidavit. The second respondent shall file his personal affidavit on the date fixed, failing which, he shall appear in person along with record.

List on 02.11.2017.

Till the next date of listing, the effect and operation of the impugned order dated 16 September 2017 passed by the second respondent District Basic Education Officer, District Badaun, shall remain stayed."

13. He submits that since then the petitioner is working and is being paid

salary. Therefore, the order impugned may be quashed and the petitioner may be allowed to continue to work as Assistant Teacher and his salary may be paid accordingly with all consequential benefits. Learned counsel for the petitioner submits that from the report as placed by the SIT it can utmost be said that some tampering is their in the records which can not be said to be any fraud or forgery on the part of the petitioner even otherwise no fraud has been done and certificates of the petitioner are genuine.

14. The written submissions were placed, on behalf of the petitioner, before this Court on 16.09.2025 in which following grounds have been taken:-

" 1. A perusal of the order impugned itself would reflect that opportunity of hearing was granted to the petitioner on 14.06.2017 alone whereas the documents relied upon by the respondent authorities to hold the petitioner guilty of filing forged educational certificates are after the date opportunity of hearing was granted to the petitioner, i.e., 06.09.2017 when the BSA, Badaun enquired about the certificates from the Vice Chancellor, Dr. B.R. Ambedkar University and the statement of Sri Sunil Kumar Srivastava, the Verification Clerk, mentioned that the verification report dated 16.08.2017 has not been issued from the office, aforesaid is reflected from the first paragraph of the second page of the order dated 16.09.2017 (page 40 to the writ petition) and averments made in para 12 of the Counter Affidavit.

2. Even for purposes of argument it is considered that despite the fact that the petitioner is a regular employee, a full fledged departmental inquiry is not required to be undertaken against the employee concerned if the material on the basis of which reliance is being placed to pass the order impugned has been furnished, whereas in the present case it is undisputed that the opportunity of hearing was granted on 14.06.2017 while reliance is placed upon the verification undertaken by the BSA, Badaun itself on 06.09.2017 from Dr. B. R. Ambedkar University and no notice in this regard was ever issued to the petitioner that reliance is being placed on the statement of Verification Clerk Sri Sunil Kumar Srivastava on the basis of which the order impugned is passed. Even endorsement of Sunil Kumar has been made on a verification report enclosed as Annexure-4 with the Counter Affidavit.

3. Attention is drawn to order dated 27.04.2017 passed by this Hon'ble Court in Writ Petition No. 17802 of 2017 (page 22 of the writ petition), a perusal of which would reflect that a specific direction was issued to complete the entire exercise within a period of 8 weeks from the date certified copy of this order is filed before him. In view of the aforesaid, since the notice was issued to the petitioner on 03.06.2017, at best, for purposes of argument it may be assumed that the certified copy of the order dated 27.04.2017 reached before the respondent authorities on 03.06.2017 even then the BSA, Badaun was duty bound to complete to the entire proceedings and pass final order, at best, not later than 03.08.2017, if the date is computed from 03.06.2017, the date when notice was issued.

Whereas the order impugned has been passed on 16.09.2017, i.e. after much delay from the time stipulated in the order dated 27.04.2017 passed by this Hon'ble Court in Writ Petition No. 17802 of 2017 which could not have been done without

taking the liberty from the court for time extension. It is specifically stated that no time extension was

taken by the authority concerned in Writ Petition No. 17802 of 2017 (the statement is being made after going through the order sheet of Writ-C No. 17802 of 2017, attention in this regard is drawn to a Full Bench Judgment in the case of Abhishek Prabhakar Awasthi Vs. New India Assurance Co. Ltd & Others, reported in 2014 (6) ADJ 641 as also Judgment passed in Writ-A No. 19199 of 2023 (Narsing Narain Singh vs. State Public Service Tribunal). True copies of Full Bench Judgment in the case of Abhishek Prabhakar Awasthi Vs. New India Assurance Co. Ltd & Others, reported in 2014 (6) ADJ 641 as also Judgment passed in Writ-A No. 19199 of 2023 (Narsing Narain Singh vs. State Public Service Tribunal) are annexed as Enclosure Nos. 1 & 2 respectively to this Written Argument.

4. Apart from the aforesaid, the petitioner being a confirmed employee a regular departmental proceedings ought to have been undertaken by the respondent authorities in case they felt that the documents filed by the petitioner are forged, whereas merely issuing a notice and passing the order impugned dehors the Rules could not have been done, attention in this regard is drawn to Judgment dated 16.04.2024 passed in SLP (C) No. 8788-8789 of 2023 (Sandeep Kumar Vs. G.B. Pant Institute); Judgment in Special Appeal Defective No. 110 of 2014 (Smt. Parmi Maurya Vs. State of UP and Others) & Judgment in the case of Riazul Hasan vs. State of UP and Others reported in (2024) 6 ALJ 542). True copies of Judgment dated 16.04.2024 passed in SLP (C) No. 8788-8789 of 2023 (Sandeep Kumar Vs. G.B. Pant Institute); Judgment in Special Appeal Defective No. 110 of 2014 (Smt. Parmi Maurya Vs. State of UP and Others) & Judgment in the case of Riazul Hasan vs. State of UP and Others reported in (2024) 6 ALJ 542) are annexed as Enclosure Nos. 3, 4 & 5 respectively to this Written Argument."

15. The counsel for the petitioner has further taken a ground that the cancellation of appointment by the order impugned without proper departmental inquiry is in violation of Article 311(2) of the Constitution of India.

16. Learned counsel for the petitioner, placing reliance upon the case of Smt. Parmi Maurya (Supra), submits that cancellation of appointment culminating to termination without proper inquiry as required under law is illegal.

17. Learned counsel for respondent opposed the aforesaid and submits that there is no illegality in the order impugned as the appointment letter was initially issued mentioning a condition that in case after verification it is found that any false statement has been made or forgery has been committed the appointment shall stand cancelled after proper inquiry. It has also been mentioned that the aforesaid appointment shall be subject to the orders passed by High Court from time to time.

18. On the complaint a proper inquiry was conducted in compliance of order passed by this Hon'ble Court, the notice dated 03.06.2017 was given to the petitioner which is clear from the reply as submitted by the petitioner on 14.06.2017 and has been placed on record by means of Annexure 5 of the writ petition.

19. Learned counsel for the respondents further submits that the

petitioner has placed self attested copies of High school and Intermediate mark-sheets and certificate. He further placed B.Com degree bearing roll number 093763 issued from Dr. Bhimrao Ambedkar University Agra as passed from Adarsh Krishna Mahavidyalaya Shikohabad, Firozabad. He further placed on record the copy of B.Ed degree alleged to have been issued by Dr. Bhimrao Ambedkar University Agra bearing roll number 5176138 as passed from Dr. Z.H Degree College.

20. After receiving a complaint from respondent no. 3 a letter dated 18.04.2017 was issued to the vice chancellor Dr. Bhimrao Ambedkar University Agra inquiring about issuance of B.Com degree with roll number 093763 and B.Ed degree with roll number 5776138. The Block Education Officer, Ujhani District- Badaun was also directed to personally visit the university along with copy of the letter for necessary compliance and certification from the university and endorsement made to this effect in the aforesaid letter proves the same. A reminder letter dated 25.05.2017 was issued as no verification was received from the university. Pursuant to the directions dated 18.04.2017 and 25.05.2017 when no information was received from the university the Block Education Officer went to the university on 16.06.2017 where he was informed that due to investigation being going on by the SIT no verification with regard to B.Ed degrees of session 2004-2005 may be done at the present. However, on availability of original records verification of the documents as required will be done.

21. A verification letter was issued on 25.05.2017 regarding B.Com degree of the petitioner. A letter dated 16.08.2017 has been placed with the counter affidavit as has been received from the university which mentions about the verification dated 25.05.2017 not being done by the university. In response to aforesaid the verification report dated 16.08.2017 was placed wherein it has been clearly mentioned that the B.Com degree of degree of Satya Veer Singh son of Chunni Lal having roll number 093763 of year 2001 has not been issued.

22. The respondent no. 2 issued letter dated 06.09.2017 regarding verification of report dated 25.05.2017 regarding the graduation mark-sheet with roll number 093763 of 2003 and B.Ed mark-sheet with roll number 5176138 of 2005 of Satya Veer Singh son of Chuuni Lal (Petitioner) as well as a report dated 16.08.2017 which has been received in his office. Further a request has been made by respondent no. 2 to get the reports verified as to whether they have been issued from his office or not.

23. From the information as given by the principal Adarsh Krishan Degree College Shikohabad District Firozabad by letter dated 10.08.2017 to the complainant also it is clear that the petitioner was not a student of the aforesaid college as in the year 2003 students from roll number 091526 to 091805 were enrolled in the said college whereas the petitioner has claimed to have roll number 093762. The perusal of the aforesaid letter dated 10.08.2017 shows that the aforesaid information has been provided through right to information act.

24. During the inquiry an affidavit was given by the petitioner on 07.04.2017 stating therein that in case his educational qualification is found to be forged his

candidature may be cancelled. Paragraph no. 2 of the said affidavit, being relevant, is reproduced hereinafter:-

"यह कि मुझ सपथकर्ता का हाई स्कूल अनु-057126 सुभाष इन्टर कालिज नौगाँव, यू.पी. बोर्ड इलाहाबाद, इन्टर मीडिएट परीक्षा अनु-29165 सुभाष इन्टर कालिज नौगाँव. यू.पी. बोर्ड इलाहाबाद, वी. कॉम. अनु 093763 ए के कालिज शिकोहाबाद, डॉ वी. आर अम्बेडकर विश्वविद्यालय आगरा बी. एड अनु -5176138 डॉ. जेड. एच. डिग्री कालेज एटा बोर्ड डा. बी. आर. अम्बेडकर विश्वविद्यालय आगरा मेरे द्वारा समस्त कथन सत्य है यदि कोई कथन गलत पाया जाता है तो मैं उसके लिए स्वयं उत्तरदायी होउंगा। जिसके लिए मैं न्यायालय आदि में नहीं जाउंगा।"

25. Learned counsel for the respondent submits that both B.Com and B.Ed degrees were found to be forged hence the appointment sought on the basis of forged documents has been cancelled and the services of the petitioner have been terminated in accordance with law. He submits that special investigating team has also investigated about the genuineness of the degrees for the session 2004-2005 and has placed its report according to which the B.Com and B.Ed degrees of the petitioner were found to be forged.

26. The counsel for the respondent submits that any person who has sought appointment on the basis of forged or by playing fraud and during course of inquiry has submitted an affidavit in this regard cannot challenge the termination order on the ground that the proper inquiry has not been done as it is settled position of law that no opportunity of hearing or inquiry is required in such cases.

27. Learned counsel for the respondent submits that the interim order granted to the petitioner was also vacated on 02.11.2017 and the same is reproduced hereinafter:-

"Sri Chandan Agarwal has filed Stay vacation application along with counter affidavit and personal affidavit on behalf of the second respondent, wherein, it is stated that the State Government constituted Special Investigation Team (SIT) to investigate the genuineness of the B.Com and B.Ed. degrees for the session 2004-05 issued by the affiliated colleges of Dr. Bhim Rao Ambedkar University, Agra. SIT has submitted report, wherein, petitioner's degree of B.Com and B.Ed. has been found forged.

Learned counsel for the petitioner prays for and is granted two weeks' time to file rejoinder affidavit.

List thereafter.

Interim order dated 12.10.2017 stands vacated."

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

29. The law is well-settled on this issue, with numerous judicial pronouncements emphasizing the importance of integrity and honesty in public appointments. Courts have consistently held that fraudulent appointments are void ab initio and must be set aside, regardless of the consequences.

30. In the case of **Ram Chandra Singh vs. Savitri Devi (2003) 8 SCC 319,** the Apex Court held that fraud as is well known vitiates every solemn act, fraud and justice never dwells together.

31. If an appointment is found to be based on forgery, the authority has the right to recall the appointment. The individual appointed under such circumstances cannot

claim any equity or rights based on their continued service, as the appointment is fundamentally flawed. The aforesaid has been held by the Co-ordinate Bench of this Court in the case of **Usha Singh vs. State of U.P. and another, 2017 SCC Online All 6109.** Also the same has been held by **Madhya Pradesh High in the case of Nageswar Sonkesri vs. State of M.P. and another 2020 SCC Online MP 4461.**

32. In the case of **Vijay Krishnarao Kurundkar and another vs. State of Maharashtra and Others, 2020 SCC Online SC 834,** the Apex Court has consistently held that appointments made on the basis of forged documents are invalid and such appointments are void ab initio and cannot be legitimized by any subsequent actions.

33. In the case of **Jainendra Singh vs. State of U.P., 2012 (8) SCC 748,** Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :-

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

(Emphasis supplied by me)

34. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

35. An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.

36. It is well settled that if the initial appointment itself was obtained fraudulently then no inquiry in terms of Rules 1999 is required as is held by the Hon'ble Supreme Court in the cases of **R. Vishwanatha Pillai Vs. State of Kerala and others, (2004) 2 SCC 105, and Patna High Court judgements in Ishwar Dayual Sah Vs. State of Bihar, 1987 Lab IC 390 and Rita Mishra Vs. Director, Primary Education, 1988 Lab IC 907.** The Apex Court, in the aforesaid cases, came to the following conclusion:

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in

the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

37. In the case of **Union of India Vs. Prohlad Guha etc., 2024 SCC OnLine SC 1865** it has been clearly held by the Apex Court that in case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek that proper procedure as prescribed under Rule 1999 must be followed.

38. Thus, where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void ab initio. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.

39. A similar type of controversy has also been dealt in **Special Appeal No. 26 of 2007 (Vinay Kumar Shahi Vs. Deon D. Upadhyay & Ors.) Neutral Citation No.-2010:AHC118883-DB and in Special Appeal No. - 211 of 2011 (Poonam Shukla Vs. State of U.P. & Others) 2015 LawSuit(AII) 3864.**

40. As regards the submission of learned counsel for petitioner that no opportunity of hearing was granted to the petitioner after inquiring about the certificates from the Vice-Chancellor of the concerned University and the statement of the clerk, it is settled law that no opportunity is to be granted to a person who has played fraud while seeking appointment. The inquiry so conducted by the University was for the purpose of verifying as to whether educational certificates as filed by the petitioner were forged or not and the report reflects about the aforesaid documents being forged. The aforesaid inquiry was a matter of record of the concerned university, therefore, inquiry was conducted and the report was placed accordingly for which no opportunity was to be given to the petitioner.

41. As regards the submission of counsel for petitioner regarding the full fledged departmental inquiry not being undertaken prior to passing of the impugned order is concerned, the matter has already been dealt in the case of **Kamlesh Kumar Nirankari Vs. State of U.P. & 2 Ors., reported in 2025 0 Supreme (All) 3053.**

42. As regards the submission of delay in inquiry in passing the final orders is concerned , in case direction of writ court was not complied with then contempt petition should have been filed. The delay in inquiry was not deliberate as several opportunities were given to the petitioner for the purpose of inquiring about the certificate from the University concerned in which time was required. Even otherwise it is not relevant in the facts of the present case.

43. To the submission as made by counsel for the petitioner regarding violation of Article 311 (2) of the Constitution of India, this Court finds that it is settled proposition of law that protection under Article 311 of the Constitution of India is available only to a person who has been validly and legally appointed to any post under the Union or a State. The Constitutional safeguard presupposes a lawful entry into a service. Where an incumbent secures an appointment by suppression of material facts or by producing forged and/or fabricated documents such an appointment is void ab initio and confers no right to hold the post. The Hon'ble Supreme Court in **R.Vishwanatha Pillai Vs. State of Kerala & Ors reported in 2004 (2) SCC 105, Union of India Vs. M. Bhaskaran reported in 1995 Supp (4) SCC 100** and others pronouncements has consistently held that fraud vitiates everything and that any appointment obtained by fraudulent means is non est in the eyes of law. In such circumstances, the individual never acquires status of a government servant and therefore cannot invoke the protection of Article 311 of the Constitution of India. Termination of service in such cases wherein appointment has been obtained by fraud is not a penalty attracting requirement of regular departmental inquiry but merely a declaration of the illegality of very appointment itself. The plea that Article 311 mandates inquiry before cancellation of such an appointment is wholly misconceived. Accordingly, it is held that wherein an appointment is obtained on the basis of fake or forged certificates the employer is competent to cancel the same without holding an inquiry under Article 311 of the Constitution of India as such, an incumbent cannot claim any constitutional protection of tenure.

44. Considering the argument advanced by learned counsel for the petitioner in which he has placed reliance on Smt. Parmi Maurya (Supra), this Court finds that it is well established that in case an employment has been obtained based on fraudulent documents beneficiary of such fraud cannot seek procedure prescribed under the relevant rules or act as not been followed for the purposes of inquiry. The aforesaid has also been held in the case of **District Basic Education Officer Vs. Smt. Punita Singh and 3 Ors.**

45. The other grounds and issues as argued by learned counsel for the petitioner have been dealt by this Court in **Writ-A No. 11846 of 2025 (Virendra Kumar Mishra Vs. State of U.P. and 4 Ors.)** as decided on 19.08.2025.

46. In view of aforesaid discussions, this petition is **dismissed**.

(2025) 9 ILRA 430
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ B No. 5902 of 1980

Tirath Raj & Ors. ...Petitioners

Versus

D.D.C. & Ors. ...Respondents

Counsel for the Petitioners:

N. Lal, Ruduvant Pratap Singh, Yogesh Kumar Tiwari

Counsel for the Respondents:
Shankatha Rai

Issue for consideration

Whether there can be any interference in writ jurisdiction in case of concurrent findings of all authorities under consolidation proceedings?

Headnotes

A. Property Law - In case of concurrent findings of all authorities under consolidation proceedings, no interference could be caused, except in exceptional circumstances, such as, if the impugned order was passed by an authority who does not have jurisdiction to pass such order or the findings are patently perverse. (Para 8)

In the present case, admittedly, Consolidation Officer has not made an issue with regard to validity of Will allegedly executed in favour of petitioners. Only two issues, i.e., "whether name of Kamla Kant alias Lallan was wrongly recorded in Khata No. 40 and 130" and "what would be the share of parties in land in dispute", were framed. No objection was raised by petitioners at relevant stage, i.e., before Consolidation Officer and they have led evidence only on basis of aforesaid two issues and accordingly the Consolidation Officer passed order whereby objections filed by petitioners were rejected. (Para 9)

Admittedly, petitioners are not part of family of Kadedeen, therefore, **a doubt that said Kadedeen could execute a Will in favour of strangers, would be a natural doubt, specifically when all three authorities have returned a finding that family members of Kadedeen have cordial relations amongst each other.** The execution of Will, therefore, surrounds with suspicious circumstances. (Para 10)

Surya Narain son of Kadedeen, died in 1945, when Kadedeen was alive and in normal circumstances it could not be believed that Kadedeen would disassociate his minor grandson, when there was no evidence that there was uncordial relationship between father and son. Settlement Officer of Consolidation has also upheld said findings. Deputy Director of Consolidation has considered the issue of Will at length that it was dated 07.05.1951 and though he referred that a 20 years old document, if submitted from a genuine custody, could be considered a genuine document, however, still **a finding was returned that petitioners have failed to prove the Will in accordance with law as well as upheld the suspicious circumstances.** (Para 11)

Aforesaid concurrent findings were based on material and at this belated stage the Court cannot reopen the issue of Will, since all the authorities under Act, 1953 have put a doubt on the manner of execution of Will, which are legally valid also. (Para 12)

B. Admittedly petitioners have failed to prove Will in accordance with law, therefore, no case of interference is made out in the concurrent orders passed by all three authorities under Act, 1953. (Para 14)

Consolidation proceedings were commenced in the year 1977, i.e., 48 years ago and this writ petition was filed against concurrent findings of all three authorities under Act, 1953 in the year 1980, i.e., about 45 years ago. The prayer for stay was already rejected by this Court, therefore, at this stage even if the Court considers argument of learned counsel for petitioners that issue of Will could be decided, however, the matter cannot be remitted to Consolidation Officer. Otherwise also, the Court is of the view that **concurrent findings cannot be disturbed since the same are not perverse.** (Para 13)

Writ petition dismissed. (E-4)

Case Law Cited

1. Krishnanand (dead) through Lrs and others Vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553 (Para 8)

2. Central Council for Research in Ayurvedic Sciences and another Vs. Bikartan Das and others, 2023 SCC Online SC 1996 (Para 8)

3. Satish Chandra Sharma Vs. State of U.P. and others, 2023:AHC:233235 (Para 14)

List of Acts

U.P. Consolidation of Holdings Act, 1953

List of Keywords

Consolidation, concurrent, will, doubt, execution, interference.

Appearances for Parties

For Petitioner: N. Lal, Ruduvant Pratap Singh, Yogesh Kumar Tiwari

For Respondent: Shankatha Rai

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

1. This writ petition is arising out of consolidation proceedings. Petitioners before this Court have lost before all the three authorities, i.e., Consolidation Officer, Settlement Officer of Consolidation and Deputy Director of Consolidation, under U.P. Consolidation of Holdings Act, 1953 *(hereinafter referred to as "Act, 1953")*.

2. Sri Ruduvant Pratap Singh, learned counsel for petitioners, is not able to dispute that scope of interference by High Court in writ jurisdiction in the concurrent findings recorded by Consolidation Authorities, is very limited, i.e., except the findings are absolutely perverse.

3. Learned counsel for petitioners submitted that the petitioners' consistent case was that they are owner of land in dispute of the share of Kadedeen in Khata No. 40 and 130, situate in Village Chati, Pargana Garwara, District Jaunpur, through a registered Will dated 07.05.1951 executed by Kadedeen in favour of petitioners. However, admittedly no such issue was framed by Consolidation Officer while considering the objections filed by parties and, therefore, the Will was not proved in accordance with law. He further submitted that in appeal petitioners have specifically taken the plea about execution of Will, however, without taking note of such grounds and without framing any issue in this regard, Settlement Officer of Consolidation has rejected claim of petitioners on basis of Will. For reference relevant part of order dated 24.01.1979 passed by Settlement Officer of Consolidation is reproduced hereinafter:

"कडेदीन द्वारा लिखा गया वसीयतनामा पत्रावली पर उपलब्ध है जिसके हासिये के गवाह केदार नाथ निवासी मनकापुर तथा बासुदेव तिवारी निवासी बक्खोपुर के है। इससे स्पष्ट है कि गांव का एक भी गवाह वसीयतनामा पर नहीं है। और यह वसीयत नामा गांव वालों से छिपाकर चुपके से लिखाया गया है जिससे कि इस वसीयत नामा को कडेदीन की कार्यवाही गांव के किसी व्यक्ति को न हो सके यह भी संदेह है कि इस वसीयतनामा को कडेदीन ने लिखा या नहीं कडेदीन के जीवनकाल में ही उसका लडका सूर्य नरायन की मृत्यु हो गई। नाबालिग पोता कमलाकान्त के जीने का कोई सहारा नहीं था उसका ख्याल न करते हुये कडेदीन ने तीर्थराज आदि के हक में अपने आराजी का वसीयत कर दिया जब कि तीर्थ राज के पिता सत्यानरायन भी जीवित थे किसी दादा से इस प्रकार की आशा नहीं की जा सकती कि अपने नाबालिग पोतो को छोडकर दूसरे पोतो को तनहा जमीन वसीयत कर दे कडेदीन के मरने के बाद आराजी निजाई पर कमला कान्त व तीर्थराज आदि दोनो का नाम वरासतन दर्ज हुआ। उस समय भी तीर्थराज आदि ने इस बात की कोई आपत्ति किया कि जरिया वसीयत वह कडेदीन के वारिस है। देव नरायन व सीताराम आदि ने कडेदीन आदि पर यू०पी० टिनेन्सी ऐक्ट की धारा 59 के अन्तर्गत दिनांक 03.12.49 को दावा दाखिल किया जिसका निर्णय दिनांक 05.11.52 को हुआ। यह मुकदमा माननीय अदालत राजस्व परिषद तक चला जहां पक्षों के बीच सुलह हुआ। उस मुकदमें में कडेदीन मृतक के स्थान पर तीर्थराज आदि बनाम कमलाकान्त उर्फ कल्लन नाबालिग पुत्र सूर्य नरायन वारिस बताये गये तथा कमला कान्त को नाबालिग के वली व कारपरदाज तीर्थ राज ने सुलहनामा कमलाकान्त कारपरदाज की हैसियत से सुलहनामा पर हस्ताक्षर किया है इस दफा 59 के मुकदमें में भी उन्होने जिक्र नहीं किया गया। अपील कर्ता गण की जानकारी में नाम कमलाकान्त का खाता में दर्ज चला आ रहा है उसी के अनुसार आराजी निजाई पर उनका कब्जा है। 1953 से अब तक वसीयतनामा के आधार पर अपना नाम दर्ज करने की कोई कार्यवाही नहीं की गई। इससे स्पष्ट है कि अपीलकर्ता गण को 1953 के वाद ही वसीयत के जरिया

अपना नाम दर्ज कराना चाहिये था यदि उन लोगो ने अपने साथ कमला कान्त को भी कडेदनी का वसीयत नामा तथा 1953 से अब तक कमलाकान्त उनके साथ बतौर सहखातेदारो दर्ज चला आ रहा है तो आज अपीलकर्ता गण यह कहने के हकदार नहीं है कि कमला कान्त का नाम खाता में गलत दर्ज है वे स्टापुल तथा एक्युलेन्स के सिद्धान्त से बाधित है। च०अ० ने अपीलकर्ता गण की आपत्ति खारिज करने में त्रुटि नहीं की है।" (Emphasis supplied)

4. Learned counsel further submitted that in revision said objection was reiterated, however, on similar grounds revision of petitioners was dismissed by Deputy Director of Consolidation vide order dated 19.02.1980 and relevant part thereof is mentioned hereinafter:

"7- सूर्य नरायन की मृत्यु दिनांक 10.4.43 को हुई। पक्षो मान्य है कि कडेदीन की मृत्यु 1953 में हुई। और निगरानी कर्ता के पिता सत्य नरायन की मृत्यु 1956 में हुई। इस प्रकार वसीयत के निष्पादन के साक्ष्य समय सत्य नरायन जीवित थे पत्रावली पर यह भी सिद्ध है कि कमलाकान्त का जन्म 1942 में हुआ थे और वसीयत के निष्पादन के समय वह भी जीवित था और नाबालिग था कमलाकान्त दिनांक 01.07.1952 के पूर्व पैदा हुआ था और इसलिये परिवार की सब संयुक्त सम्पत्ति में उनके निहित अधिकार थे वसीयत की इबारत में कडेदीन द्वारा यह लिखा गया है कि उनके सत्य नरायन व सूर्यनरायन थे यह उल्लेख वसीयतनामा में कडेदीन ने लिखा है कि वसीयत में लाभार्थी के अतिरिक्त उसके लडके सत्य नरायन और पूर्व मृतक पुत्र के कमला कान्त जीवित थे वसीयत में हिब्बेनामें से प्राप्त जायदाद व संयुक्त परिवार की मौरूसी जायदाद को कतई अलग अलग नहीं बयान किया गया है। इस उल्लेख से जाहिर होता है कि वसीयत बिल्कुल फर्जी है और अमान्य है। इसके विपरीत उत्तरवादियों ने दो एक पत्र काफी पुराने प्रस्तुत किये है जिसमें सत्य नरायन और कमलाकान्त के आपसी सम्बन्ध की चर्चा है जो एक परिस्थिति गत साक्ष्य है जिसमें यह पुष्टि होता है कि परिवार सदैव संयुक्त रहा है और सारी सम्पत्ति का इसी तरह से प्रयोग हुआ है इसके अतिरिक्त एक बात और भी उल्लेखनीय है कि विवादित सम्पत्ति में 165, 176 आदि ऐसी भूमि होती है जो दखिल कारी सीरदारी थी जिनका न हिब्बा नामा हो सकता था न ही वसीयत हो सकती थी।" (Emphasis supplied)

5. Learned counsel further submitted that Settlement Officer of Consolidation as well as Deputy Director of Consolidation, both have committed error that matter ought to have been remitted back to Consolidation Officer to pass a fresh order after framing issue on validity of Will, however, it was not done. He also submitted that without specific pleadings on the issue, both authorities, i.e., Settlement Officer of Consolidation and Deputy Director of Consolidation, have made comments disputing execution of Will. No opportunity was granted to petitioners to prove the Will in accordance with law.

6. None appeared on behalf of respondents despite a notice was issued by this Court and on basis of office report dated 15.05.2022 this Court vide order dated 17.08.2022 found that service upon respondents was sufficient.

7. I have considered the above submissions and perused the record.

8. As already referred that the in case of concurrent findings of all authorities under consolidation proceedings, no interference could be caused, except in exceptional circumstances, such as, if the impugned order was passed by an authority who does not have jurisdiction to pass such order or the findings are patently perverse. In this regard, the Court takes note of judgments passed Supreme Court in **Krishnanand (dead) through Lrs and others vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553** and **Central Council for Research in Ayurvedic Sciences and another vs. Bikartan Das and others, 2023 SCC Online SC 1996**. Relevant paragraphs of said judgments are mentioned hereinafter:

Krishnanand (supra):

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into re-appreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since, the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has no where stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances."

Central Council for Research in Ayurvedic Sciences (supra):

"65. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

66. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. [See : King v. Nat Bell Liquors Ltd., [1922] 2 A.C. 128 (PC)]"

9. In the present case, admittedly, Consolidation Officer has not made an

issue with regard to validity of Will allegedly executed in favour of petitioners. Only two issues, i.e., "whether name of Kamla Kant alias Lallan was wrongly recorded in Khata No. 40 and 130" and "what would be the share of parties in land in dispute", were framed. No objection was raised by petitioners at relevant stage, i.e., before Consolidation Officer and they have led evidence only on basis of aforesaid two issues and accordingly the Consolidation Officer passed order whereby objections filed by petitioners were rejected.

10. Admittedly, petitioners are not part of family of Kadedeen, therefore, a doubt that said Kadedeen could execute a Will in favour of strangers, would be a natural doubt, specifically when all three authorities have returned a finding that family members of Kadedeen have cordial relations amongst each other. The execution of Will, therefore, surrounds with suspicious circumstances.

11. Surya Narain son of Kadedeen, died in 1945, when Kadedeen was alive and in normal circumstances it could not be believed that Kadedeen would disassociate his minor grandson, when there was no evidence that there was uncordial relationship between father and son. Settlement Officer of Consolidation has also upheld said findings. Deputy Director of Consolidation has considered the issue of Will at length that it was dated 07.05.1951 and though he referred that a 20 years old document, if submitted from a genuine custody, could be considered a genuine document, however, still a finding was returned that petitioners have failed to prove the Will in accordance with law as well as upheld the suspicious circumstances.

12. Aforesaid concurrent findings were based on material and at this belated stage the Court cannot reopen the issue of Will, since all the authorities under Act, 1953 have put a doubt on the manner of execution of Will, which are legally valid also.

13. Consolidation proceedings were commenced in the year 1977, i.e., 48 years ago and this writ petition was filed against concurrent findings of all three authorities under Act, 1953 in the year 1980, i.e., about 45 years ago. The prayer for stay was already rejected by this Court, therefore, at this stage even if the Court considers argument of learned counsel for petitioners that issue of Will could be decided, however, the matter cannot be remitted to Consolidation Officer. Otherwise also, the Court is of the view that concurrent findings cannot be disturbed since the same are not perverse.

14. The Court also takes note of a judgment passed by this Court in **Satish Chandra Sharma vs. State of U.P. and others, 2023:AHC:233235** wherein the manner to prove a Will was discussed at length and since admittedly petitioners have failed to prove Will in accordance with law, therefore, also no case of interference is made out in the concurrent orders passed by all three authorities under Act, 1953.

15. The writ petition is accordingly dismissed.

(2025) 9 ILRA 435
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.09.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 12083 of 2019

Jitendra Pratap Singh ...Petitioner
Versus
Upsanchalak Chakbandi Sultanpur Camp Lucknow & Ors. ...Respondents

Counsel for the Petitioner:

Counsel for the Respondents:

Issue for consideration

Whether an incumbent, who otherwise has interest in property, loses his right in the property in question and stands ousted from the property merely because he has not at all participated in the proceedings in question?

Headnotes

A. Property Law - U. P. Consolidation of Holdings, Act, 1953: Ss. 4(2), 9, 49; Limitation Act: Section 17 - The revenue court while dealing with the suit for declaration can, on coming to the finding that the entries made by the consolidation authorities were procured by fraud and were wrong, declare the plaintiff's right as tenure holder and direct that the entries be corrected accordingly. (Para 44)

In present case, the plaintiff's case was that the plot in dispute was purchased through a registered sale deed dated 17.3.1969, both by the plaintiff and defendant (writ petitioner), who was a co-sharer. The case of the plaintiff further was that it was the defendant petitioner who was looking after the cases in the court, and the plaintiff, who was living in the forest, being Gaderiya looking after his goats, was duped by the defendant in removing his name from the revenue record. The plaintiff has also claimed that after the sale deeds, both parties came in possession. **A co-sharer who claim to be in possession of the property and whose name is not recorded in the consolidation proceeding is not debarred from bringing a suit u/s 229-B for correcting the entries and recording his name, also if the allegation is that his name was removed by practising fraud on him.** (Para 45)

B. When the name of a co-tenure holder could not be recorded by practising fraud, the entries in consolidation proceeding can be challenged and bar of Section 49 would not at all come into place since fraud vitiates even the most solemn proceeding. (Para 46)

The U.P. Consolidation of Holdings Act does not deal with the grant of authority to grant substantive rights to a tenure holder, rather it is only empowered to recognize the existing rights of tenure holder and in the said direction a full-fledged mechanism has been provided for. (Para 48)

C. Landed property be it individually, jointly, or based on co-sharer confers rights over the property in question and the said rights in question can be defeated or be taken away only in accordance with law. (Para 49)

A right of property is a human right and also a constitutional right and the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such a right and as far as U.P. Consolidation of Holdings Act, 1953 is concerned, the purpose of the aforementioned Act is not at all to divest an incumbent of such right keeping in view the provisions of Article 300-A of the Constitution of India as its paramount object is to see that agricultural activity is to be carried out in one area and in case at the point of time of constituting one compact are, in respect of one compact area in case anyone has to raise any issue, he can come forward. (Para 50)

D. Section 49 of the 1953 Act contemplates a bar to the jurisdiction of the Civil or Revenue Court for the grant of a declaration or adjudication of rights of tenure holders in respect of land lying in an area for which consolidation proceedings have commenced. The Supreme Court has further held that Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of the Civil or Revenue Court only during the period when consolidation proceedings are pending. (Para 55)

Notably, such suspension of jurisdiction of these Courts through the non obstante provision is only with respect to the declaration and adjudication of rights of tenure holders. In other

words, unless a person is a pre-existing tenure holder, Section 49 does not come into operation. (Para 56)

E. The object of the 1953 Act is to prevent fragmentation of the land holdings and consolidate them in such a fair and equitable manner that each tenure holder gets nearly equivalent land rights in the same revenue estate, and that the duty of a Consolidation Officer u/s 49 of the 1953 Act is to prevent fragmentation and consolidate the different parcels of land of a tenure holder.

The power u/s 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure holder. No such jurisdiction is conferred upon a Consolidation Officer or any other Authority under the 1953 Act. The power to declare the ownership in an immovable property can be exercised only by a Civil Court save and except when such jurisdiction is barred expressly or by implication under a law. **Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights.** (Para 57)

In present case, petitioner is claiming his rights through Smt Kulvanta Devi, his mother, on the basis of a registered sale deed dated 19/03/1959. Therefore, even before the consolidation proceedings, Smt Kulvanta Devi was the joint owner of the property, and such rights cannot be taken away during the consolidation proceedings.

F. The delay was duly explained and no objections were ever filed by the respondents and in the peculiar circumstances of the case, where the order impugned was based on fraud, the benefit of section 17 of the Limitation Act would accrue to the petitioner, and accordingly, the delay ought to have been condoned. (Para 60)

Writ petition allowed. (E-4)

Case Law Cited

1. Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, (1987) 2 SCC 107 (Para 22)

2. G. Ramegowda, Major and others Vs. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142 (Para 23)

3. G. Ramegowda, Major and others Vs. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142 (Para 24)

4. State of Nagaland Vs. Lipok AO and others (Para 245)

5. New India Insurance Co. Ltd. Vs. Shanti Misra (Para 25)

6. N. Balakrishnan Vs. M. Krishnamurthy (Para 25)

7. State of Haryana Vs. Chandra Mani and Special Tehsildar (Para 25)

8. Land Acquisition Vs. K.V. Ayisumma (Para 25)

9. Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459 (Para 26)

10. Improvement Trust, Ludhiana Vs. Ujagar Singh and others, AIR 2010 SC 228 (Para 27)

11. Balwant Singh (dead) Vs. Jagdish Singh and others, (2010) 8 SCC 685 (Para 28)

12. Union of India Vs. Ram Charan, AIR 1964 SC 215 (Para 28)

13. P.K. Ramachandran Vs. State of Kerala, (1997) 7 SCC 556 (Para 28)

14. Katari Suryanarayana Vs. Koppisetti Subba Rao, AIR 2009 SC 2907 (Para 28)

15. Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629 (Para 29)

16. Vedabai Vs. Shantaram Baburao Patil, (2001) 9 SCC 106 (Para 29)

17. V. Papayya Sastry and others Vs. Govt. of A.P. and others, (2007) 4 SCC 221 (Para 34)

18. Prashant Singh and others Vs. Meena and others, (2024) 6 SCC 818 (Para 35)

19. Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649 (Para 36)

20. Vijay Narayan Vs. Deputy Director of Consolidation and 6 others, Writ-B No.218 of 2022 (Para 36)

21. Nanda Vs. DDC Ghaziabad and others, Writ-B No.9205 of 2001 (Para 36)

22. Pathapati Subba Reddy (Died) BY L.R.'s and Others Vs. The Special Deputy Collector (L.A.) SLP (Civil) No.31248 of 2018 (Para 36)

23. Raj Kishore Vs. Deputy Director of Consolidation and others, C.M.W.P. No.3372 of 1999 (Para 36)

24. Jagdish Ram Vs. DDC, Barabanki and others, 2025 AHC-LKO 16108 (Para 36)

25. Gafoor and another Vs. Deputy Director of Consolidation and others, AIR 1975 SC 1716 (Para 37)

26. Smt. Kiran Devi Vs. Deputy Director of Consolidation, Ghaziabad, 2008 (1) RJ 643 (Para 37)

27. Randhir Singh Vs. Deputy Director of Consolidation, Saharanpur and 5 others, Writ-B No.23936/2017 decided on 14.7.2017 (Para 37)

28. Ashok Kumar Vs. Deputy Director of Consolidation, Allahabad Camp and others, 2009 (9) ADJ 32 (Para 38)

29. Sita Ram Vs. Chhota Bhondey, AIR 1991 SC 249 (Para 40)

30. Amar Singh Vs. State of U.P., 2008 (104) RD 421 (Para 42)

31. Smt. Sudama Vs. Hansraj, 1981 R.D. 116 (Para 44)

32. Karbalai Begum Vs. Mohd. Sayeed and others, AIR 1981 SC 77 (Para 45)

33. N. Padmamma Vs. S. Ramakrishna Reddy, AIR 2008 SC 2834 (Para 50)

34. Rajiv Sarin Vs. State of U.K., 2011 (8) SCC 708 (Para 51)

35. Amar Nath Vs. Kewla Devi and another, AIR SCW 3110 (Para 54)

36. Prashant Singh and others Vs. Meena and others, (2024) 6 SCC 818 (Para 55)

List of Acts

U. P. Consolidation of Holdings, Act, 1953; Limitation Act; U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

sufficient cause, consolidation, delay, Condonation, fragmentation, fraud.

Appearances for Parties

For Petitioner: Sri Vijay Bahadur Verma

For Respondent: Standing Counsel for the State-respondents and Sri Upendra Nath Mishra, Senior Advocate assisted by Sri Amit Kumar Singh for the private respondents

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

1. Heard Sri Vijay Bahadur Verma, learned counsel for the petitioner, as well as learned Standing counsel for the State-respondents and Sri Upendra Nath Mishra, learned Senior Advocate assisted by Sri Amit Kumar Singh for the private respondents.

2. The petitioner, being aggrieved by the rejection of his claim with regard to the property situated at Khata no.26 in village Adharkhera, Parghana Mahona, Tehsil Bakshi Ka Talab, District Lucknow, from Jagan, which was purchased jointly by his mother, Smt Kulwanta Devi, and Lalta Singh, has assailed the orders dated

02/03/1960 passed by the Assistant Consolidation Officer, order dated 11/03/2015 passed by the Settlement Officer of Consolidation, and order dated 16/02/2019 passed by the Deputy Director of Consolidation.

3. According to the petitioners, the disputed land was purchased vide a registered sale deed on 19/03/1959 by Sri Kamta Singh, the father of the petitioner, who paid the consideration for the purchase of the said land, which was registered in the name of Smt. Kulwanta Devi, his wife, and Lalta Singh, his brother. Lalta Singh moved an application for mutation based on the aforesaid Sale dated 19/03/1959 before the Assistant Consolidation Officer, and the land was mutated only in the name of Lalta Singh.

4. It is the case of the petitioners that the said land continued to be in joint possession of the mother of the petitioner and a younger brother-in-law (Devar), and she was not aware that Lalta Singh had got the land mutated in his own name only, even though, as per the sale deed, the land was jointly purchased.

5. It was submitted that in the meantime, the consolidation operation had been held in the said village twice, the 1st proceedings were conducted between 1960 and 1966, and secondly from 1996 to 2002. The mother of the petitioner, namely Smt. Kulwanta Devi has died in the meantime. The petitioner stated that he is the son and legal heir, along with the party No. 2 of Smt. Kulwanta Devi, and that they came to know about the mutation of the disputed land in the name of Lalta Singh, only on 23/09/2013 from inspection of the record, and after taking legal opinion, challenged the order of mutation dated 02/03/1960 by filing an appeal before the Settlement of the Consolidation, Lucknow.

6. The appeal was decided and rejected on 11/03/2015, thereby declining to condone the delay in filing the said appeal. Before the appellate authority, it was the case of the petitioner that the entire sale consideration for the sale of the disputed property was given by their father, Sri Kamta Singh, while the sale deed was executed in favour of Smt. Kulwanta Devi and Lalta Singh. The father of the petitioner, Kamta Singh, was working in the police department and was posted in Moradabad. He superannuated from service in 1971 from Sitapur, and the appellant was living with him all along and therefore was not aware of the mutation proceedings having been carried out by Lalta Singh. After his retirement, his father started living in the village Teghna Mau and died in 1990, and during this period, the appellant could hardly visit Lucknow or find out about the disputed land. It was further stated that the petitioner and his brother got involved in the agricultural work in the disputed land jointly with the successor in interest of Lalta Singh, and there was therefore never any doubt about their ownership, nor did they suspect any wrongdoing that Lalta Singh would have got the land mutated in his name only to the exclusion of Smt. Kulwanta Devi fraudulently had further categorically denied that the Smt. Kulwanta Devi had entered into any sort of compromise or agreement with Lalta Singh before the consolidation officer so that the land could be mutated in his name alone.

7. Before the Settlement Officer of Consolidation, the opposite parties Nos. 1 and 2 accepted the fact that the sale deed was jointly in the name of Lalta Singh and

Smt. Kulvanta Devi and there was no legal basis for having the land recorded in the name of only Lalta Singh to the exclusion of Kulvanta Devi.

8. The Settlement Officer of Consolidation considered the fact that in the second round of consolidation notification under Section 52 had already been issued on 22.8.2003 and was of the view that once the first consolidation proceedings had been concluded, then the petitioner lost any right to file an appeal with regard to orders passed in the second consolidation proceedings. In the said circumstances, the Settlement Officer of Consolidation found that the delay of 53 years is an extremely long length of time and no satisfactory explanation has been given by the petitioner, apart from which the consolidation proceedings have been conducted twice, and such a long delay cannot be condoned and thereby dismissed the appeal filed by the petitioner.

9. The petitioner, being aggrieved by the order of the Settlement Officer of Consolidation dated 11.3.2015, filed a revision before the Deputy Director of Consolidation. Before the revisional authority, it was submitted that the petitioners had duly explained the delay in filing the said appeal, apart from which the opposite party had not filed any objection, and accordingly stated that the delay in filing the appeal ought to have been condoned. The Deputy Director of Consolidation examined the entire factual controversy and the grounds taken by the petitioner, and also considered the objection of the opposite parties and upheld the order of the Settlement Officer of Consolidation. He has further taken into consideration that the brother of the petitioner, Yogendra Pratap Singh, has not joined him in filing the appeal and has been made the respondent in the revision.

10. Considering the aforesaid facts, he found that the delay of 53 years is not liable to be condoned and accordingly rejected the same.

11. Learned counsel for the petitioner assailing the impugned orders has submitted that there is no dispute with regard to the fact that, as per the sale deed dated 19.3.1959, the land was purchased jointly in the name of Lalta Singh, son of Babu Madhav Singh and the mother of the petitioner, namely Kulvanta Devi. He further submitted that any order of mutation passed on the basis of the aforesaid registered sale deed ought to have been made jointly in the name of Kulvanta Devi and Lalta Singh, but by exercising undue pressure and with collusion of revenue authorities, Lalta Singh got the land mutated only in his own name in proceedings under Section 9 of U. P. Consolidation of Holdings, Act. He submits that in the appeal, he had given adequate reasons so that the appellate authority could set aside the delay, much as the father of the petitioner, who was working in the police department, served in various districts, and the petitioner, who was a student, had been accompanying his father wherever he was posted. He further submits that his father superannuated from service in 1971 from Tigahana Mau and died in 1990. It is further stated that the petitioner and his brother started agricultural activities along with his relatives on the disputed land, and it is only in 2013 that he came to know that the land had been recorded exclusively in the name of Lalta Singh. They inspected the record and filed an appeal. It was stated that the delay has been satisfactorily explained, and there is

no finding that the grounds given by the petitioner were false or incorrect, or that they had any knowledge about the order dated 02/03/1960.

12. It was vehemently submitted that there is no dispute that the predecessor-in-interest of the respondents had fraudulently got the entire land mutated in the name of Lalta Singh and accordingly in such circumstances benefit of Section 17 of the Limitation Act was available to the petitioners and any solemn act which has been done fraudulently cannot be sustained and, therefore, in the peculiar facts of the present case the revision preferred by the petitioner ought to have been allowed.

13. The petitioners have further submitted that any order which has been obtained by fraud is a nullity and non-est in the eyes of the law, and if that being the case, the order obtained by fraud can be challenged in any court at any time or even in collateral proceedings. The basis of the aforesaid arguments is that Lalta Prasad had got the land mutated clandestinely without disclosing this fact to the predecessor of the interest of the petitioner exclusively in his name, even though the said mutation was made based on the sale deed dated 19.3.1959.

14. The petition has been vehemently opposed by Sri Upendra Nath Mishra, Senior Advocate, assisted by Sri Amit Kumar Singh as well as Learned Counsel for respondent no.6. It was stated that a family settlement was arrived at between the parties where it was stated that both the brothers had resolved that they shall keep their lands separately whereas Kamta Prasad shall relinquish his rights in favour of Lalta Prasad in the disputed land. It was stated that it is on the basis of the said compromise that by means of an order dated 02.03.1960, his land came to be recorded only in the name of Kamta Prasad. It was further stated that as the village fell into consolidation operations from 1960-66, where no objections were filed by the petitioner, and Smt Kulwanta Devi died in 1980, and during her lifetime, no objections were filed against the order dated 02.03.1960. It was submitted that the second consolidation proceedings were initiated in 1996 and concluded in 2003, and no dispute was raised by the petitioner or his brother, and accordingly supported the order passed by the Settlement Officer of Consolidation in the second consolidation proceedings. He submits that such inordinate delay in initiating legal proceedings cannot be condoned.

15. It was further submitted that as the petitioner had not filed any objection under Section 9 of the U.P. Consolidation of Holdings Act, they were precluded from invoking the provisions of Section 11 of the 1953 Act and, therefore, the appeal preferred by the petitioner itself was not maintainable.

16. It was further submitted that all the disputes relating to title are decided in consolidation proceedings and no objection/appeal or revision was preferred by the petitioner during the first consolidation proceedings and in allowing the statutory prohibition provided for under Section 49, the appeal filed by the petitioner was not maintainable accordingly it was submitted that there is no infirmity in the impugned orders dated 2.3.1960, 11.3.2015 and 16.2.2019 and prayed for dismissal of the writ petition.

17. Considering the rival contentions, it is noticed that there is no dispute with

regard to the essential facts in issue. The dispute in the present case relates to the property situated at Khata No. 26 in Village Adharkhera, Parghana Mohana, Tehsil Bakshi Ka Talab, District Lucknow, which was jointly purchased by means of a registered sale deed dated 19.3.1959 in the name of Smt. Kulvanta Devi and Lalta Singh. On the basis of the application given by Lalta Singh, aforesaid property came to be recorded exclusively in the name of Lalta Singh by means of order dated 2.3.1960 passed by Assistant Consolidation Officer after a delay of nearly 53 years the appeal has been filed by the petitioner challenging the order dated 2.3.1960 which has been rejected on the ground of limitation by means of order dated 11.3.2015 and even Deputy Director of Consolidation has rejected the revision by his order dated 16.2.2019.

18. The appellants in the said case had pleaded that the orders passed by the competent authority under the Consolidation of Holdings Act had attained finality and Kamta Singh and Smt Kulvanta Devi had lost their right, title, and interest in the subjected land and further that the appeal was filed hopelessly time barred and, therefore, the Deputy Director of Consolidation also rejected the revision preferred by the petitioner.

19. Per contra, the petitioners/respondents had contended that neither Section 49 of the Act of 1953 nor the Consolidation Officer was competent to interfere with the ancestral rights as tenure holder on the subject land of Kamta Singh. It was further urged that Smt Kulvanta Devi was a co-tenure holder of the subject land along with Kamta Singh or his successor, and the possession of the land continued in favour of all the co-tenure holders, and even if one of them was in actual physical possession, the said possession was permissible on behalf of all the co-owners. It was submitted that the initial order was passed during the first consolidation proceedings by the Assistant Consolidation Officer on 02/03/1960.

20. In the present dispute, the appellate authority has already noticed that neither the sale deed is controverted, nor the fact that the property ought to have been mutated in the joint name of Lalta Singh and Smt Kulvanta Devi.

21. Before we delve into the factual scenario and the defensibility of the order condoning delay, it seems prudent to state the obligation of the court when dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such a substantial delay.

22. In **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (1987) 2 SCC 107**, a two-Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression *"sufficient cause"* employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized the adoption of a liberal approach while dealing with the applications for condonation of delay, as ordinarily a litigant does not stand to benefit by lodging an appeal late, and refusal to condone delay can result in a

meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach, but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational common-sense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds, as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State, which represents the collective cause of the community, does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression "sufficient cause".

23. In **G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142** Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

"The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : ***Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.[3] ; Shakuntala Devi Jain v. Kuntal Kumari[4] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi[5] ; Lala Mata Din v. A. Narayanan[6] ; Collector, Land Acquisition v. Katiji*** *etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction, or lack of bona fide on the part of the party or its counsel, there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."*

24. In **O.P. Kathpalia v. Lakhmir Singh (dead) and others, AJR (1984) 4 SCC 60,** the Supreme court was dealing with a fact-situation where the interim order passed by the court of first instance was an interpolated order, and it was not ascertainable as to when the order was made. The said order was under appeal before the District Judge, who declined to condone the delay, and the said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be a failure of justice and, accordingly, set aside the orders impugned therein, observing that the appeal before the District Judge deserved to be heard on the merits.

25. In **State of Nagaland v. Lipok AO and others, the Court, after referring to New India Insurance Co. Ltd. V. Shanti Misra, N. Balakrishnan v. M. Krishnamurthy, State of Haryana v. Chandra Mani and Special Tehsildar, Land Acquisition v. K.V. Ayisumma,** came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.

26. In this context, we may refer with profit to the authority in **Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** where a two-Judge Bench of the Supreme Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties, but to ensure that they do not resort to dilatory tactics and seek remedies without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which a legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

27. In **Improvement Trust, Ludhiana v. Ujagar Singh and others, AIR 2010 SC 228,** it has been held that while considering an application for condonation of delay, no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

28. A reference to the principle stated in **Balwant Singh (dead) v. Jagdish Singh and others, (2010) 8 SCC 685** would be quite fruitful. In the said case the Court referred to the pronouncements in **Union of India v. Ram Charan, AIR 1964 SC 215, P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556 and Katari Suryanarayana v. Koppisetti Subba Rao, AIR 2009 SC 2907** and stated thus:-

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

29. In the case of **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629** the

Hon'ble Supreme Court referred to the pronouncement in **Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106** wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus: -

"23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on the bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay." Eventually, the Bench, upon perusal of the application for condonation of delay and the affidavit on record, came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years."

30. Considering the submissions of the petitioner, it is found that the act of moving the application before the Assistant Consolidation Officer, and having the property recorded exclusively in the name of Lalta Singh on the basis of the sale deed dated 19/03/1959 was an act of fraud on Smt Kulvanta Devi, and therefore in such circumstances the said order itself was non-est, illegal and arbitrary, and further that the said fact was concealed from Smt Kulvanta Devi and her legal heirs who were the joint property holders, which also amounted to fraud. Further, the order obtained fraudulently is liable to be set aside, and any delay caused in filing the appropriate application ought to have been condoned. Undoubtedly, on the execution of the sale deed, Lalta Singh and Kulwant became the joint owners of the property, and accordingly, the property ought to have been registered jointly in their names. Merely because Lalta Singh got the property mutated in his name alone in the revenue records would not deprive Kulvanta Devi of the benefits of ownership of the said property. The respondents could not offer any defence regarding the said aspect that the property ought to have been recorded in the joint names.

31. Though before the Deputy Director of Consolidation, a vain attempt was made to justify the order dated 02/03/1960 on the ground that the property was purchased by Lalta Singh out of his own funds, and Smt. Kulvanta Devi had entered into a settlement before the Assistant Consolidation Officer. No document was filed in this regard, and in the said circumstances, both the authorities below did not accept the aforesaid argument and rejected the same.

32. This court, after considering the rival contentions, is of the considered view that the disputed property ought to have been recorded in the joint names of Lalta Singh and Smt. Kulvanta Devi, when the application for mutation was based on the sale deed dated 19/03/1959, which clearly shows that the property was jointly purchased. We see no reason as to why the land was recorded only in the name of Lalta Singh and therefore have no hesitation in holding that Lalta Singh had fraudulently got the land recorded in his name, to the exclusion of Smt Kulvanta Devi, in collusion with the authorities. We also take note of the provisions of section 17 of the Limitation Act, which is reproduced here under:_

17. Effect of fraud or mistake.—

(1) Where, in the case of any suit or application
For which a period of limitation is prescribed by this Act,—

(a) The suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b)the knowledge of the right or title on which a

Suit or application is founded is concealed by the

Fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the

right of the plaintiff or applicant has been

fraudulently concealed from him, the period of

limitation shall not begin to run until plaintiff

or applicant has discovered the

fraud or the mistake or could, with reasonable

diligence, have discovered it; or in the case of a

concealed document, until the plaintiff or the

applicant first had the means of producing the

concealed document or compelling its production:

33. Accordingly, in case Section 17 is applied, then the period of limitation would commence from the date of discovery of fraud. In the present case, the reasons for the delay have been duly considered by the Settlement Officer Consolidation, where it was stated that the father of the petitioner, who was working in the police department, served in various districts, and the petitioner, who was a student, had been accompanying his father wherever he was posted. He further submits that his father superannuated from service in 1971 from Tigahana Mau and died in 1990. It is further stated that the petitioner and his brother started agricultural activities along with his relatives on the disputed land, and it is only in 2013 that he came to know that the land had been recorded exclusively in

the name of Lalta Singh. Though the delay was of extremely long length of time, but the delay caused was satisfactorily explained, and also that these facts were never controverted by the respondents, coupled with the fact that the order assailed in the appeal was itself obtained by fraud accordingly, such delay was which was duly and satisfactorily explained was entitled to be condoned, and both the authorities below have committed manifest error in declining to condone the delay and dismissing the appeal and revision preferred by the petitioner.

34. With regard to the delay caused in setting aside an order obtained by fraud, the Hon'ble Supreme Court in the case of ***A. V. Papayya Sastry and others Vs. Govt. of A.P. and others, (2007) 4 Supreme Court Cases 221*** have held as under:-

"Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

In ***S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331,*** *this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:*

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

(emphasis supplied)

The Court proceeded to state: "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party".

The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

In ***Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888,*** *this Court stated;*

"The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".

(emphasis supplied) In ***United India Insurance Co. Ltd. v. Rajendra Singh & Ors., (2000) 3 SCC 581 : JT 2000 (3) SC 151****, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.*

Allowing the appeal and setting aside the orders, this Court stated;

"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice".

35. Hon'ble Supreme Court in the case of ***Prashant Singh and others Vs. Meena and others, (2024) 6 Supreme Court Cases 818*** while dismissing the appeals held as under:-

"14. The power to declare the ownership in an immovable property can be exercised only by a Civil Court, save and except when such jurisdiction is barred expressly or by implication under a law. Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights.3

15. Having held so, it is not difficult to explain that Kalyan Singh had acquired ancestral rights as a tenure holder. He was co-owner in the suit land much before the consolidation proceedings

commenced. Hence, the only declaration and adjudication of rights of Ramji Lal or 1 Attar Singh v. State of U.P., 1959 Supp (1) SCR 928, para 3. 2 Amar Nath v. Kewla Devi, (2014) 11 SCC 273, para 17. 3 Karbalai Begum v. Mohd. Sayeed, (1980) 4 SCC 396, para 12-13. Kalyan Singh that a Consolidation Officer could undertake under Section 49 of the 1953 Act was to avoid the fragmentation of their respective land holdings and consolidate or redistribute the parcels of land among them. As analyzed above, the provision does not enable the Consolidation Officer to grant ownership to Ramji Lal in respect of a property, which, before the consolidation proceedings, never vested in him. Vice versa, the Consolidation Officer could not take away the ownership rights of Kalyan Singh which he had already inherited much before the commencement of the consolidation proceedings.

16. That being so, the order dated 08.05.1960 passed by the Consolidation Officer has rightly been held to be null and void and without any jurisdiction. It was passed usurping a power fraudulently, which never ever vested in a Consolidation Officer. The said order is thus liable to be ignored for all intents and purposes. Having held that, it is not necessary for us to go into the question of fraud played upon Kalyan Singh in securing that order with or without collusion of the Consolidation Officer. All that is required to be held is that the order dated 08.05.1960 had no binding force or any adverse effect on the rights of Kalyan Singh."

36. Learned counsel for the respondents in the present case have laid much emphasis on the aspect of delay and relied upon the following judgment of the Supreme Court, where the delay has not been condoned:-

1. **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649.** (Paa No.15.8 and 15.10 and 22)

2. **Vijay Narayan Vs. Deputy Director of Consolidation and 6 others**, Writ B No.218 of 2022 (page No.s 3, 6 and 7)

3. **Nanda Vs. DDC Ghaziabad and others, Writ B No.9205 of 2001**(para No.s 4 and 5)

4. **PathapatiSubba Reddy (Died) BY L.R.s and Others Vs. The Special Deputy Collector (L.A.)** SLP (Civil) No.31248 of 2018 (para No. 3, 7, 23 to 26 and 32)

5. **Raj Kishore Vs. Deputy Director of Consolidation and others** passed in C.M.W.P. No.3372 of 1999 (Para No.s 3, 15 and 22) and

6. **Jagdish Ram Vs. DDC, Barabanki and others, 2025:AHC-LKO:16108** (Para 19)

37. They have further stated that Statutory Bar under Section 11 A of Consolidation of Holdings Act, restraining from raising objections at any subsequent stage, if not raised under Section 9 earlier, is akin to the principle of 'res judicata' and relied upon the following judgments:-

1. **Gafoor and another Vs. Deputy Director of Consolidation and others, AIR 1975 SC 1716** (para 3)

2. **Smt. Kiran Devi Vs. Deputy Director of Consolidation, Ghaziabad, 2008 (1) RJ 643 at 647and 648**

3. **Randhir Singh Vs. Deputy Director of Consolidation, Saharanpur and 5 others**, Writ B No.23936/2017 decided on 14.7.2017 (paga 2 and 3)

38. It was also contended by them that according to Section 49 of the Consolidation of Holdings Act, a person is restrained from raising ownership rights which already stood decided in consolidation proceedings, in any subsequent rounds of consolidation proceedings, and relied upon the following judgments:-

Ashok Kumar Vs. Deputy Director of Consolidation, Allahabad Camp and others, 2009 (9) ADJ 32.

39. Considering the rival submissions in this regard, we find that the non-obstente clause used in section 49 of the act of 1953 that "proceedings could ought to have been taken under this act" imposes an absolute bar on civil or revenue Court from entertaining any proceedings in respect of declaration and adjudication of right of a tenure holder or adjudication of any other right arising out of Consolidation operations, for which person concerned ought to have or could have taken proceedings at the time when the villagers brought under consolidation operation by promulgation of notification under section 4 (2) of the act of 1953. Accordingly, finality is sought to be attached with regard to the declaration and adjudication of rights of tenure holders, and after culmination of the Consolidation proceedings and issuance of notification under section 52 of the Act of 1953, the civil or revenue courts do not have any jurisdiction to entertain any such litigation for adjudication to declare the right, title, and interest of the parties.

40. This view has also been taken and upheld by the Supreme Court in the case of **Sita Ram vs Chhota Bhondey, AIR 1991 Supreme Court 249.**

41. The object primarily appears to be allotting a compact area to the tenure holders in place of their scattered plots and this much is also reflected that with the passage of time, the area of operation of the aforementioned Act in question has been enhanced by providing that all such issues that can be answered after notification has been issued under Section 4(2) in reference of adjudication of rights arising out of consolidation proceedings be dealt with at one forum and declaration and adjudication of rights of tenure holders in respect of land lying in the area covered by notification under Section 4(2) of the Act and for adjudication of any other right arising out of consolidation proceedings.

42. A Division Bench of our Court, in the case of **Amar Singh Vs. State of U.P., 2008 (104) RD 421**, while considering the issue as to whether the suit filed was barred under Section 49 of the Act, held as follows:-

"The bar contained in Section 49 contemplates a bar of entertainment of suit by a civil or revenue court in respect of following:

(a) the declaration and adjudication of rights of tenure holders,

(b) adjudication of any other rights arising out of consolidation proceedings, and

(c) adjudication of any right in regard to which a proceeding could or ought to have been taken under U.P. Consolidation of Holdings Act, 1953."

43. In view of the above, it is clear that any adjudication done with regard to land lying in the area in which a notification under Section 4(2) of the U.P. Consolidation of Holdings Act, 1953 has been issued operates a bar of reagitating in any other revenue or civil Court. The second limb of Section also creates a bar with regard to adjudication of any other right regarding which proceedings could or ought to have been taken under U.P. Consolidation of Holdings Act, 1953. The provision contains the principles of *res judicata* as well as principles of constructive *res judicata*.

44. This Court, in the case of **Smt. Sudama v. Hansraj, reported in 1981 R.D. 116** has again reiterated the same view. The case of the appellant before the High Court was that the defendant abused their position in getting their name recorded as the sole tenure holder by practising fraud on the plaintiff by misrepresentation before the consolidation authorities. The court took the view that the suit under Section 229-B for declaration of the title was not barred. The following was observed by the Court:-

"The revenue court while dealing with the suit for declaration can, on coming to the finding that the entries made by the consolidation authorities were procured by fraud and were wrong, declare the plaintiff's right as tenure holder and direct that the entries be corrected accordingly."

45. Coming to the facts of the present case, the plaintiff's case was that the plot in dispute was purchased through a registered sale deed dated 17.3.1969, both by the plaintiff and defendant (writ petitioner), who was a co-sharer. The case of the plaintiff further was that it was the defendant petitioner who was looking after the cases in the court, and the plaintiff, who was living in the forest, being Gaderiya looking after his goats, was duped by the defendant in removing his name from the revenue record. The plaintiff has also claimed that after the sale deeds, both parties came in possession. A co-sharer who claim to be in possession of the property and whose name is not recorded in the consolidation proceeding is not debarred from bringing a suit under Section 229-B for correcting the entries and recording his name, also if the allegation is that his name was removed by practising fraud on him. The judgment of the Apex Court in the case of **Karbalai Begum Vs. Mohd. Sayeed and others, AIR 1981 SC 77** fully supports the view taken by the courts below that the suit is not barred under Section 49 of the U.P. Consolidation of Holdings Act, 1953.

46. Section 49 of 1953 Act under the scheme of things contemplates bar of entertainment of suit by a Civil Court/Revenue Court in respect of right of tenure holder, however exception has been carved out based on judicial pronouncement that when the name of a co-tenure holder could not be recorded by practising fraud, the entries in consolidation proceeding can be challenged and bar of Section 49 would not at all come into place since fraud vitiates even the most solemn proceeding.

47. Once we have proceeded to examine the parameters of the provisions of Section 49 of the U.P. Consolidation of

Holdings Act, 1953, the larger issue i.e. engaging our attention is as to whether an incumbent, who otherwise has interest in property, looses his right in the property in question and stands ousted from the property merely because he has not at all participated in the proceedings in question.

48. In respect of right in land, the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 are self sufficient and the provisions of U.P. Consolidation of Holdings Act, 1953 as already quoted above had only limited role to play in respect to consolidation of agriculture holdings to facilitate better quality of agriculture activities, whereas U.P. Act No.1 of 1951 deals with all aspects including the acquisition of interest of intermediaries and its consequences, vesting of land for Gaon Sabha and its superintendence, management of control of land etc by the Land Management Committee and its tenural rights, classes of tenure, transfers, dissolution, division/ extension of rights, rent, ejectment, conferment of rights etc. U.P. Consolidation of Holdings Act no point of time has ever proceeded to deal with the expansion of rights or with the conferment of rights, rather under the scheme of things provided under U. P. Consolidation of Holdings Act, the existing rights over the land under consolidation operation are only to be recognized under the provisions of U.P. Consolidation of Holdings Act and nothing beyond the same. The U.P. Consolidation of Holdings Act does not deal with the grant of authority to grant substantive rights to a tenure holder, rather it is only empowered to recognize the existing rights of tenure holder and in the said direction a full-fledged mechanism has been provided for.

49. Landed property be it individually, jointly, or based on co-sharer confers rights over the property in question and the said rights in question can be defeated or be taken away only in accordance with law.

50. Apex Court in the case of **N. Padmamma Vs. S. Ramakrishna Reddy, AIR 2008 SC 2834** held that a right of property is a human right and also a constitutional right and the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such a right and as far as U.P. Consolidation of Holdings Act, 1953 is concerned, the purpose of the aforementioned Act is not at all to divest an incumbent of such right keeping in view the provisions of Article 300-A of the Constitution of India as its paramount object is to see that agricultural activity is to be carried out in one area and in case at the point of time of constituting one compact are, in respect of one compact area in case anyone has to raise any issue, he can come forward.

51. Apex Court, in the case of **Rajiv Sarin vs. State of U.K. 2011 (8) SCC 708** while considering the provisions of U.P.Z.A.L.R. Act alongwith K.U.Z.A.L.R. Act (Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act 1960) took the view where appellants' father had acquired in the year 1945 propriety right in an estate which comprised of large tracts of forest spanning in and around and where by Gazette notification dated 21.12.1977 under Section 4-A of K.U.Z.A.L.R. Act as amended by U.P. Act No.15 of 1978, the rights, title and interest of hissedar in respect of forest land situated in the specified areas ceased w.e.f. 01.01.1978 and the same were vested in the State Government, qua the said forest land stand

taken by the State that the right, title or interest of a hissedar could be acquired without payment of compensation cannot be accepted as every hissedar whose rights, title or interest are acquired under Section 4, shall be entitled to receive and be paid compensation. Said right has been recognised on the anvil of Article 300-A of the Constitution, which ensures that persons should not be deprived of property save by authority of law. The scrutiny of the subject matter of U.P.C.H. Act clearly reflects that at no point in time has the endeavour under the said Act been to deprive a person of his property; rather, said legislation was directly linked with agrarian reforms, an enactment under Schedule VII List II Entry 18 of "land".

52. Conscious of this situation, mention has been made that right in the property in question is not at all lost under the provisions of U.P. Consolidation of Holdings Act, 1953, rather the forum to regain the property in question is lost, being barred by operation of law.

53. Once a right in property cannot be taken away except in accordance with law, as Article 300-A of the Constitution protects such a right, in such a situation and in this background, the larger issue is that, would in such a situation, accepting for the purposes of the case that the rights are there even then, there is a loss of forum?

At this juncture, the two Judgements of the Apex Court are being looked into.

54. Apex Court in the case of **Amar Nath Vs. Kewla Devi and another AIR SCW 3110** has clearly ruled in reference of bar being placed under Section 49 of U.P. Consolidation of Holdings Act, 1953 that where plaintiff claimed himself to be belonging to a common ancestor as defendant and then order was passed against him by playing fraud and his right to be accorded as co-bhoomidhar in revenue records cannot stand extinguished merely because he withdrew objection, the Apex Court took the view that orders of consolidation officer suffers of legal malice as there is accepted withdrawal of plaintiff's objection without examining evidence produced as to ownership of land and bar under Section 49 has been held to be not attracted. Relevant extract of the said judgement reads as follows:-

"We do not think it necessary to remit the matter back to the High Court for fresh consideration. We feel it is sufficient to set aside the impugned judgment and uphold the well-reasoned judgment of the first appellate court where it was held that the very fact that the trial court held that it was proved that Amar Nath was s/o Vaij Nath based on the evidence on record, then automatically the court should have given half the portion of the disputed land to the appellant along with defendant no.1, Kewla Devi. Instead, the trial court as well as the Consolidation Officer have passed judgments that are bad in law as they have failed to see that the right of the appellant cannot simply be extinguished because of the defendants' plea that he has entered into a compromise. The defendants have taken undue advantage of the appellant's illiteracy and the Consolidation Officer has abdicated his role by allowing the objection of the appellant to be withdrawn and by not examining whether or not the appellant was indeed the S/o Vaij Nath who was the S/o Gaya. The order of the Consolidation Officer is thus bad in law and it has resulted in a grave miscarriage of justice. We think it fit to restore the

judgment and decree passed by the first appellate court wherein the court declared that the appellant, Amar Nath is S/o Vaij Nath who was son of Gaya thereby holding that the order passed by the Consolidation Officer is void and illegal and the trial court was wrong in not quashing the order of the Consolidation Officer and that nowhere in the revenue record was his name recorded and fraud was committed against him as defendant no.1, Kewla Devi has got her name recorded in each and every revenue record. The judgment of the first appellate court is legal and valid as it is fair and keeping with the principles of justice. The trial court in its answer to issue nos. 1 and 10 has rightly held that Amar Nath is S/o Vaij Nath who was undisputedly the son of Gaya and if that fact was proved, then we see no reason why it was not directed for the appellant's name to be recorded in the revenue records. The right of the appellant over the suit schedule property cannot be extinguished simply because objection was withdrawn, over which there is a cloud of doubt anyway and also, the appellant has pleaded that he had no idea about the order of the Consolidation Officer in the first place. We find it highly likely that fraud was committed on him by the defendants as well as the Consolidation Officer by not recording his name in the revenue records as the defendants have taken undue advantage of his illiteracy so that the whole property goes to the defendants."

55. We further find that the controversy in this regard has been laid to rest by the Supreme Court in the case of ***Prashant Singh and others Vs. Meena and others, (2024) 6 Supreme Court Cases 818***, where it has been observed that Section 49 of the 1953 Act contemplates a bar to the jurisdiction of the Civil or Revenue Court for the grant of a declaration or adjudication of rights of tenure holders in respect of land lying in an area for which consolidation proceedings have commenced. The Supreme Court has further held that Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of the Civil or Revenue Court only during the period when consolidation proceedings are pending.

56. *"Notably, such suspension of jurisdiction of these Courts through the non obstante provision is only with respect to the declaration and adjudication of rights of tenure holders. In other words, unless a person is a pre-existing tenure holder, Section 49 does not come into operation"*, states the bench.

57. Further, the Supreme Court has observed that the object of the 1953 Act is to prevent fragmentation of the land holdings and consolidate them in such a fair and equitable manner that each tenure holder gets nearly equivalent land rights in the same revenue estate, and that the duty of a Consolidation Officer under Section 49 of the 1953 Act is to prevent fragmentation and consolidate the different parcels of land of a tenure holder. *"Such a power can be exercised only in respect of those persons who are already the tenure holders of the land. Conversely, the power under Section 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure holder. No such jurisdiction is conferred upon a Consolidation Officer or any other Authority under the 1953 Act".* The Supreme Court has further held that *"the power to declare the ownership in an immovable property can be exercised only by a Civil Court save and except when such jurisdiction is barred expressly or by implication under a law" and that "Section*

49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights"

58. The Court further observed that Kalyan Singh had acquired ancestral rights as a tenure holder, that he was a co-owner in the suit land, much before the consolidation proceedings commenced. *"Hence, the only declaration and adjudication of rights of Ramji Lal or Kalyan Singh that a Consolidation Officer could undertake under Section 49 of the 1953 Act was to avoid the fragmentation of their respective land holdings and consolidate or redistribute the parcels of land among them"*, remarks the Bench

59. It was accordingly held that section 49 does not enable the Consolidation Officer to grant ownership to Ramji Lal in respect of a property, which, before the consolidation proceedings, never vested in him, and clarified that vice versa, the Consolidation Officer could not take away the ownership rights of Kalyan Singh, which he had already inherited much before the commencement of the consolidation proceedings.

60. Considering the facts of the present case, we find that the petitioner is claiming his rights through Smt Kulvanta Devi, his mother, on the basis of a registered sale deed dated 19/03/1959. Therefore, even before the consolidation proceedings, Smt Kulvanta Devi was the joint owner of the property, and such rights cannot be taken away during the consolidation proceedings, and this court relies upon the law laid down by the Hon'ble Supreme Court in the case of ***Prashant Singh and others Vs. Meena and others (Supra)***. With regard to the delay, we have already considered the said aspect and found that the same was duly explained and no objections were ever filed by the respondents and in the peculiar circumstances of the case, where the order impugned was based on fraud, the benefit of section 17 of the Limitation Act would accrue to the petitioner, and accordingly, the delay ought to have been condoned.

61. Accordingly, the writ petition is **allowed**. The impugned orders dated 11/03/2015 and 16/02/2019 are illegal and arbitrary, and are accordingly set aside. The order dated 02/03/1960, having been obtained by fraud, is also quashed.

62. As the land was purchased jointly in the names of Lalta Singh and Smt. Kulvanta Devi, it shall vest jointly in both and, after their death, with their legal heirs.

63. The parties would be at liberty to move an appropriate application before the competent authority/court for passing orders in compliance with the directions issued herein.

(2025) 9 ILRA 456
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.09.2025

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.

Writ C No. 18053 of 2025

C/M Hindu Inter College, Kandhla & Anr. ...Petitioners

Versus

State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Abhishek Shekhar Ojha, Anurag Kumar Ojha, Parmatma Nand Ojha, Sr. Advocate

Counsel for the Respondents:
C.S.C., Vikas Upadhyay

ISSUE FOR CONSIDERATION

Whether the State Government before passing the order under Section 16 (D) (4) of the Act is bound to give an opportunity to Committee to show cause.

HEADNOTE

Uttar Pradesh Intermediate Education Act, 1921 — Section 16-D(3), 16-D(4) — Appointment of Authorized Controller — Financial irregularities — Violation of Scheme of Administration — Opportunity of hearing — Principles of natural justice — Recording of reasons

HELD

On plain reading, sub-section (4) is silent regarding requirements of notice to be served upon the Committee of Management before any order is passed by the State Government. What is required is application of mind to the relevant facts placed before the Administrative Authority; short reasons that weight with them to take action need to be recorded.It is settled law that High Court exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. (Para 23, 32, 33)

In the instant case, the Committee of Management challenged the appointment of the Authorized Controller alleging violation of the principles of natural justice and non-consideration of their reply. However, in the present case, the petitioners were supplied with the enquiry reports, issued notice, granted time, and personally heard. Adequate opportunity was provided, and reasons have been recorded. The Government applied its mind to the facts and came to the conclusion that the Committee had contravened clauses (v) and (vi) of Section 16-D(3), and therefore, the power under Section 16-D(4) was rightly exercised. The writ petition was dismissed. The Authorized Controller has been directed to take charge and conduct elections within the statutory period. (E-5)

CASE LAW CITED

In re H.K. (An Infant), (1967) 2 QB 617;
Suresh Koshy George v. University of Kerala, 1968 SCC OnLine SC 9

List of Acts

U.P. Intermediate Education Act, 1921;
Constitution of India

List of Keywords

Section 16-D(4) — Authorized Controller — Natural justice — Administrative fairness — Opportunity of hearing — Financial irregularities — Committee supersession — Judicial restraint

CASE ARISING FROM

Order dated 19.05.2025 passed by Special Secretary, Secondary Education Department, Government of U.P.

Appearances for Parties

Advs For Petitioner: Ashok Khare (Sr. Advocate), Parmatma Nand Ojha, Abhishek Shekhar Ojha, Anurag Kumar Ojha
Advs For Respondents: C.S.C., V.K. Singh (Sr. Advocate), Vikas Upadhyay

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The instant writ petition has been filed by the petitioner to issue a writ, order or direction in nature of *certiorari* quashing the impugned order dated 19.05.2025 passed by respondent no.1 i.e. Special Secretary, Secondary Education, Government of U.P. and also prayed for issuance of writ, order or direction in the nature of mandamus directing the respondent authorities not to interfere in the peaceful functioning of petitioners' Committee of Management of the Institution.

Factual Matrix

2. The petitioners' Institution is Non-Government aided Secondary School recognized upto Intermediate level. The above-said Institution is governed under the

provision of Uttar Pradesh Intermediate Education Act, 1921 (here-in-after referred to as "the Education Act") and regulation made therein. The school has an administration plan, approved and sanctioned by the department to run the Institution in accordance with Scheme. The Committee of Management of School was constituted as per the promulgated provisions. As per the scheme, the term of Committee of Management is three years and one month.

3. The last election of Committee of Management was held on 29.10.2023, in which one Pradeep Kumar Singhal was elected as Manager and one Satish Kumar Mittal was elected as President of Committee of Management of the Institution, which has been duly recognized by the District Inspector of Schools, Shamli (for short the "D.I.O.S.").

4. Due to bad health, the then Manager Sri Pradeep Kumar Singhal had resigned from the post of Manager and the same had been accepted by the Committee of Management and Committee of Management has elected Sri Akash Kumar Singhal as a Manager for remaining period of Committee of Management of the Institution.

5. One Raj Kumar had made a complaint before the Director of Education (Secondary) U.P., Prayagraj against the Manager and requested for initiation of an enquiry against the said Manager. On the above-said complaint, Director of Education (Secondary) U.P., Prayagraj directed to the Joint Director of Education (Secondary), Saharanpur Region, Saharanpur to make an enquiry against the petitioner. The Director of Education (Secondary) U.P., Prayagraj issued a show cause notice on 16.08.2023 under Section 16-D(3) of the Education Act to the petitioner. Against the said show cause notice dated 16.08.2023, petitioner preferred a writ petition bearing Writ – C No.32169 of 2023 before this Court for quashing the said show cause notice on the ground that Director of Education (Secondary) U.P., Prayagraj has initiated the proceeding with *mala fide* intention on the complaint of the complainant.

6. The above-said Writ – C No.32169 of 2023 has been dismissed by this Court on the ground that the instant writ petition was filed at premature stage as no final order had been passed. After completion of initial enquiry, the Divisional Finance and Account Officer, office of Joint Director of Education, Saharanpur Division, Saharanpur has submitted a report dated 25.01.2022 to the Joint Director of Education, Saharanpur Division, Saharanpur and subsequently the said report was forwarded to the Director of Education (Secondary) U.P., Prayagraj vide covering letter dated 03.02.2022. The Additional Director of Education (Secondary) U.P. issued a notice on 25.02.2022 to the petitioner and sought the explanation within thirty days.

7. The Additional Director of Education (Secondary) U.P. made a report on 11.12.2024 and submitted it to the Deputy Secretary U.P. Government, Sanskriti Education Section (Secondary Education Section-9), Lucknow.

8. The Director of Education (Secondary) U.P. made a report dated 07.02.2025 and submitted it before Special Secretary, U.P. Government, Secondary Education Section-9 (Sanskriti Education Section), Lucknow. After considering the

above-said reports dated 11.12.2024 and 07.02.2025, the State Government passed an order dated 19.02.2025. The said order dated 19.02.2025 was challenged in Writ Petition No.6941 of 2025. This Court passed the order dated 19.03.2025, by which the impugned order dated 19.02.2025 therein had been set aside on the ground that the report dated 11.12.2024 and 07.02.2025 were not supplied to the petitioners and direction had been issued to respondent no.1, Special Secretary (Secondary Education) Government of U.P., Lucknow to pass a fresh order, in accordance with law, within a period of two months.

9. In pursuance of said order, the petitioner made a representation on 07.04.2025 and subsequently the Government of U.P. had issued a notice dated 02.05.2025, by which it was intimated that the petitioners may submit the explanation/reply and date had been fixed for hearing on 07.05.2025 at 3.30 p.m. in the office of Special Secretary (Secondary Education). The petitioners appeared before the respondent no.1 and sought further time for filing explanation and the time was granted and date was fixed on 14.05.2025. The petitioners appeared before the Special Secretary (Secondary Education) and submitted the written explanation. D.I.O.S. had also appeared before the Special Secretary after considering the oral submissions and written submissions of the petitioners. Respondent no.1 passed impugned order dated 19.05.2025, by which the authorized controller has been appointed for the period of six months.

10. Hence, the instant writ petition has been filed.

Submissions:

11. Learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 19.05.2025 was passed by respondent no.1 without considering the averments made in the reply submitted on 14.05.2025, 24.03.2022, 14.03.2022 and 24.07.2024. It is further submitted that while passing the impugned order, respondent no.1 has not even accorded any reason, therefore, the said order is non- speaking and vague and passed without application of mind.

12. Learned counsel appearing on behalf of the petitioners submitted that the impugned order is contrary to the provisions under Section 16-D(4) (8) of the U.P. Intermediate Education Act, 1921 (here-in-after referred to as "the Education Act") on account of fact that no notices were issued by any of the Education Authority to the petitioners with regard to election dated 29.01.2024. It is also submitted that the impugned order passed by respondent no.1 is only passed upon the *ex parte* reports sent by the Educational Authorities from time to time against the petitioners, since the petitioners' averments have not been considered by the respondent no.1 while passing the impugned order and there were no finding recorded by respondent no.1 for rejecting the averments of the petitioners.

13. Learned counsel appearing on behalf of the petitioners submitted that as per Clause 10 of the Scheme of Administration clearly provides that any person who has been elected by the Committee of Management of the Institution for remaining period of term of Committee of Management of the Institution is legal and valid. It is submitted

that in pursuance of the directions given by Director of Secondary Education, U.P. Prayagraj to the District Inspector of Schools, Shamli on 04.08.2023 and the direction given by the Director of Education, U.P. Prayagraj to the Joint Director of Education, Saharanpur Region Saharanpur on 02.04.2023 and 02.05.2023, neither the District Inspector of Schools, Shamli nor the Joint Director of Education (Secondary), Saharanpur Region, Saharanpur has afforded any opportunity of hearing to the petitioners prior to submitting the recommendation to the Director of Secondary Education, U.P. Prayagraj. Therefore, the impugned order dated 19.05.2025 passed by respondent no.1 is arbitrary and discriminatory exercise of power violating the principle of natural justice and deserves to be set aside.

14. *Per contra*, learned Standing Counsel appearing on behalf of the State-respondents vehemently opposed the instant writ petition and submitted that there are no illegality or error in the impugned order. The impugned order has been passed by respondent no.1 after considering the entirety of the matter and material on record. It is submitted that on early occasion, an audit/enquiry report dated 25.01.2022 was submitted by the Divisional Finance and Account Officer, office of Joint Director of Education, Saharanpur before the Joint Director of Education, Saharanpur Division, Saharanpur and subsequently, it was forwarded before the Director of Education (Secondary), U.P., Prayagraj by a covering letter dated 03.02.2022 and in pursuance of it, the Additional Director of Education (Secondary), U.P. issued a notice on 25.02.2022 to the petitioners/Manager, Committee of Management, Hindu Inter College, Kandhla, District Shamli and sought explanation within 30 days.

15. It is further submitted that the Additional Director of Education (Secondary), U.P. made a report on 11.12.2024 and submitted it before Deputy Secretary, Uttar Pradesh Government, Sanskriti Education Section (Secondary Education Section-9), Lucknow. The Director of Education (Secondary) U.P. made a report on 07.02.2025 and submitted it before Special Secretary, Uttar Pradesh Government, Secondary Education Section-9 (Sanskriti Education Section) Lucknow. After considering the above-said reports dated 11.12.2024 and 07.02.2025, the State Government passed an order dated 19.02.2025 and subsequently it was challenged by means of writ petition bearing Writ Petition No.6941 of 2025. The Co-ordinate Bench of this Court passed the order dated 19.03.2025, by which the impugned order dated 19.02.2025 has been quashed on the ground that the report dated 11.12.2024 and 07.02.2025 were not supplied to the petitioners and directions has been issued upon respondent no.1, Special Secretary (Secondary Education) Government of U.P., Lucknow to pass a fresh order, in accordance with law, within a period of two months.

16. It is further submitted that in pursuance of the said order, the petitioners made a representation on 07.04.2025 and subsequently the Government of U.P. had issued a notice dated 02.05.2025, by which it had been intimated that the petitioners may submit the explanation as per his requirement in the matter concern and date was fixed for hearing in the office of Special Secretary (Secondary Education). It

is further submitted that in the instant notice dated 02.05.2025, the reports dated 11.12.2024 and 07.02.2025 had also been enclosed, therefore, the petitioners have full knowledge about the facts of the case and also have knowledge about two reports i.e. 11.12.2024 and 07.02.2025.

17. Learned Standing Counsel for the State-respondents further clarified that since on the earlier occasion this Court had set aside the order passed by the Special Secretary only on the ground that both the reports dated 11.12.2024 and 07.02.2025 were not supplied to the petitioners. It is vehemently submitted that on 07.05.2025, the petitioners appeared before the Special Secretary and sought time for filing their replication/explanation for their case and the next date was fixed on their request on 14.05.2025. On 14.05.2025, the D.I.O.S., Shamli and the Manager of the Institution appeared before the Special Secretary (Secondary Education) and the Manager submitted his oral statement as well as his written submissions. Thereafter, the Special Secretary after considering the reply and submissions of respective parties, passed the impugned order dated 19.05.2025.

18. Learned Standing Counsel appearing on behalf of the State-respondents submitted that in view of the above-said facts, the petitioners have failed to make out any case for issuance of writ, order or direction as prayed in the instant writ petition. The instant writ petition is devoid of merit and has to be dismissed.

19. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri P.N. Ojha, learned counsel appearing on behalf of the petitioners, Sri Dinesh Kumar Singh, learned Standing Counsel appearing on behalf of the State-respondents, Sri V.K. Singh, learned Senior Advocate assisted by Sri Vikas Upadhyay, learned counsel appeared to assist the Court.

Analysis and Findings

20. Taking into consideration the submissions made in forgoing paragraphs, the short question for determination is as to whether the State Government before passing the order under Section 16 (D) (4) of the Act is bound to give an opportunity to Committee to show cause.

21. Provisions under Section 16-D of the Act is quoted as under:

"[16-D. (1) The Director may cause a recognized institution to be inspected from time to time.

(2) The Director may direct a management to remove any defect or deficiency found on inspection or otherwise.

(3) If on the receipt of information or otherwise, the Director is satisfied that –

(i) the Committee of Management of an institution has failed to comply with the judgment of any court or any direction made under this Act or any other law for the time being in force; or

(ii) the Committee has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of academic standard in the institution or has appointed or retained in service any teaching or non-teaching staff in contravention of the provisions of this Act or the Regulations; or

(iii) any dispute with respect to the right claimed by different persons to be lawful office-bearers of the Committee of Management has affected the smooth and orderly administration of the institution concerned; or

(iv) the Committee has persistently failed to provide the institution with such adequate and proper accommodation, library, furniture, stationery, laboratory equipment or other facilities as are necessary for the efficient administration of such institution; or

(v) the Committee has substantially diverted misapplied or misappropriated the property of the institution to its detriment or has transferred any property in contravention of the provisions of the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 (U.P. Act No.3 of 1975);or

(vi) the draft of the Scheme of Administration has not been submitted within the time allowed therefore under Section 16-B, or that the Management of the institution is being conducted otherwise than in accordance with the Scheme of Administration or the affairs of the institution are being otherwise mis-managed;

(vii) the Scheme of Administration in relation to an institution, approved before the commencement of the Intermediate Education (Amendment) Act, 1980, is inconsistent with the provisions of this Act and the management of the institution has failed to alter or modify it within a reasonable time despite notice under section 16-CCC; he may refer the case to the Board for withdrawal of recognition of such institution, or issue notice to the Committee of Management to show cause within thirty days from the date of receipt of notice why an order under sub-section (4) should not be made.

(4) Where the Committee of Management of an institution fails to show cause within the time allowed under sub-section (3) or within such extended time as the Director may, from time to time allow, or where the Director, is after considering the cause shown by the Committee of Management satisfied that any of the grounds mentioned in sub-section (3) exists, he may recommend to the State Government to appoint an Authorized Controller for that institution, and thereupon, the State Government may, by order, for reasons to be recorded, authorize any person (hereinafter referred to as the Authorized Controller) to take over, for such period not exceeding two years, as may be specified, the Management of such institution and its properties:

Provided that if the State Government is of opinion that it is expedient so to do in order to continue to secure the proper management of the institution and its properties, it may, from time to time, extend the operation of the order, for such period, not exceeding one year at a time, as it may specify, so however, that the total period of operation of the order, including the period specified in the initial order, but excluding the period specified in sub-section (8), does not exceed five years :

Provided further that if at the expiration of the said period of five years, there is no lawfully constituted Committee of Management of the institution, the

Authorized Controller shall continue to function as such, until the State Government is satisfied that a Committee of Management has been lawfully constituted."

22. As per aforesaid scheme of the statute contained in Section 16(D)(1) provides that Director may cause a recognized institution to be inspected from time to time, sub Clause (2) would provide that the Director may direct the management to remove any defect or deficiency found during the inspection or otherwise, whereas, sub Clause 3 provides the eventualities upon which the Director may refer the case of the Institution to the Board for withdrawal of recognition of such Institution and issue notice to the Committee of Management to show cause within thirty days from the date of receipt of such notice why an order under sub Section (4) should not be made. Sub Clause (4) would provide that where the Committee of Management of an Institution fails to show cause within the time allowed under Sub Section (3) or within such extended time as the Director may from time to time allow, where the Director, after considering the show cause shown by the Committee of Management is satisfied that any of the grounds mentioned in sub Section (3) exists, he may, recommend to the State Government to appoint an authorized controller for that Institution.

23. On plain reading, sub-section (4) is silent regarding requirements of notice to be served upon the Committee of Management before any order is passed by the State Government.

24. The question how far the principle of natural justice govern administrative enquiries came up for consideration before the Queen's Bench Division In re H. K. (An Infant)1 Therein the validity of the action taken by an Immigration Officer came up for consideration. In the course of his Judgement Lord Parker C.J. observed thus:

"But at the same time, I myself think that even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest. or bona fide decision must, as it seems to me, require not merely impar-tiality, nor merely bringing one's mind to bear on the problem, but acting fairly, and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially."

25. In the same case Blain J., observed thus:

"I would only say that an immigration officer having assumed the

jurisdiction granted by those provisions is in a position where it is his duty to exercise that assumed jurisdiction whether it be administrative, executive or quasi-judicial, fairly, by which I mean applying his mind dispassionately to a fair analysis of the particular problem and the information available to him in analysing it. If in any hypothetical case, and in any real case, this court was satisfied that an immigration officer was not so doing, then in my view mandamus would lie."

26. In the case of **Suresh Koshy George v. University of Kerala,**[2] Hon'ble Supreme Court held that rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

27. I may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle of natural justice, in addition to the language of the provision, undoubtedly, that can be exceptions to the said doctrine.

28. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic schemes of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power.

29. The relevant paragraphs of the impugned order dated 19.05.2025 are reproduced here-in-below:-

"6- दिनांक 14.05.2025 को विशेष सचिव, माध्यमिक शिक्षा विभाग, उत्तर प्रदेश शासन की अध्यक्षता में सम्पन्न सुनवाई बैठक में संस्था प्रबंधक द्वारा प्रस्तुत किये गये उपर्युक्त प्रस्तर-5 में वर्णित पक्ष / बिन्दुओं के सम्बन्ध में वस्तुस्थिति निम्नवत् हैः-

> हिंदू इंटर कॉलेज, कांधला, शामली एक अशासकीय सहायता प्राप्त माध्यमिक संस्था है, जिस पर इंटरनीडियंट शिक्षा अधिनियम 1921. व वेतन वितरण अधिनियम 1971 से प्रविधान प्रभावी व पोषित है।

> संस्था में व्याप्त वित्तीय अनियमितताओं के संबंध में प्राप्त शिकायतों के आधार पर मंडलीय संयुक्त शिक्षा निदेशक सहारनपुर ने वित्तीय अनियमितता होने के दृष्टिगत प्रकरण की जाँच मंडलीय ऑडिट इकाई, सहारनपुर से करायी गयी।

> मंडलीय ऑडिट इकाई सहारनपुर ने अपनी संप्रेक्षण आख्या में निम्नवत वित्तीय अनियमितता के पुष्टित होने के सबंध में स्थिति से अवगत कराया गया-

ऑडिट के दौरान उपलब्ध कराये गये रिकार्ड की जाँच से निम्न तथ्य / वित्तीय अनियमितताएं संज्ञानित हुयी-

कैशबुक के अनुसार नकद धनराशि उपलब्ध होते हुए भी प्रत्येक माह नकद आहरण बैंक से किया जाता रहा जिसका कोई औचित्य स्पष्ट नहीं किया गया।

अधिकांशतः भुगतान नकद ही किये गये हैं जबकि नियमानुसार समस्त भुगतान चौक के माध्यम से किये जाने चाहिए।

निर्माण कार्यों में किये गये व्यय बिल बाऊचर्स इत्यादि की जाँच के समय यह तथ्य भो प्रकाश में आया कि किसी भी प्रकार की टेण्डर/कोटेशन की प्रकिया नहीं अपनायी गयी है।

दिनांक 09.10.2019 को कैशबुक (बैंक / दुकानों से प्राप्त किराये के सम्बन्ध में) में 22,000.00 का व्यय

लोन के रिपेयमेंट के नाम से किया गया है जिस सम्बन्ध में कोई विवरण उपलब्ध नहीं कराया गया।

दिनांक 17.01.2020 को कैशबुक में 1,25,000.00 रु० का नकद व्यय दर्शाया गया है जबकि इस सम्बन्ध में विद्यालय द्वारा कोई भी स्थिति स्पष्ट नहीं की गयी।

कैशबुक के अनुसार उपलब्ध नकद का माहवार भौतिक सत्यापन किया जाना चाहिए जिसके सम्बन्ध में कोई स्थिति स्पष्ट नहीं की गयी।

ऑडिट की अवधि के दौरान वर्तमान में अवशेष नकद का भौतिक सत्यापन भी ऑडिंट टीम को नहीं कराया गया।

विद्यालय कैशबुक के परीक्षण से संज्ञानित है कि अनेको निर्माण कार्यों के प्रति नकद व्यय दर्शाये गये है परन्तु मजदूरी के सम्वन्ध में दैनिक मस्टर रोल प्रस्तुत नहीं किये गये।

> उपरोक्त स्थिति स्पष्ट हो जाने के उपरांत संस्था में व्याप्त वित्तीय अनियमितता के निराकरण हेतु मंडलीय संयुक्त शिक्षा निदेशक, सहारनपुर ने संस्था प्रकरण समिति के विरुद्ध इंटरमीडियट शिक्षा अधिनियम 1921 की धारा 16डी(2) के अधीन कार्यवाही किये जाने के संबंध में निदेशालय को प्रकरण संदर्भित किया गया।

> उपरोक्त प्राप्त प्रस्ताव के आलोक में इंटरमीडियट शिक्षा अधिनियन 1921 की धारा 16 डी (2) के अधीन संस्था प्रबन्धक को निदेश निर्गत करते हुये प्राप्त वित्तीय अनियमितता की निराकरण आख्या उपलब्ध कराये जाने के संबंध में निर्देशित किया गया।

> तत्क्रम में संस्था प्रबन्धक से प्राप्त उनके अभिकथन पर जिला विद्यालय निरीक्षक शामली से संस्तुति उपलब्ध कराये जाने के संबंध में निर्देशित किया गया, जिसके अनुपालन में जिला विद्यालय निरीक्षक शामली ने वित्तीय अनियमितता स्पष्ट होने की स्थिति में संस्था प्रबंध समिति के विरुद्ध इंटरमीडियट शिक्षा अधिनियम 1921 की धारा 16 डी के अधीन कार्यवाही किये जाने के संबंध में संस्तुति की गयी।

> इसी क्रम में मंडलीय संयुक्त शिक्षा निदेशक, सहारनपुर ने भी संस्था वित्तीय अनियनितता संज्ञानित व स्पष्ट हो जाने के दृष्टिगत संस्था प्रबंध समिति के विरुद्ध इंटरमीडियट शिला अधिनियम 1921 की धारा 16 डी के अधीन कार्यवाही किये जाने के संबंध में संस्तुति की गयी।

> उपरोक्त मंडलीय/जनपदीय अधिकारियों से प्राप्त प्रस्ताव / संस्तुति के आलोक मे इंटरमीडियट शिक्षा अधिनियम 1921 की धारा 16 डी (3) के अधीन निदेशालय द्वारा संस्था प्रबन्धक, हिन्दू इण्टर कालेज, कांधला, शामली को कारण बताओं नोटिस निर्गत करते हुये अधिनियम में स्थापित व्यवस्था के अधीन ३० दिवस के भीतर अपना पक्ष प्रस्तुत किये जाने के संबंध में आदेशित किया गया।

> संस्था प्रबन्धक द्वारा उपरोक्त निर्धारित 30 दिवस के भीतर अपना अभिकथन प्रस्तुत न किये जाने के दृष्टिगत इंटरमीडियट शिक्षा अधिनियम 1921 की धारा 16 डी की उपधारा-4 के अधीन निदेशालय द्वारा प्रकरण की स्थिति से अवगत कराते हुये संस्था की परिसंपत्तियों के प्रबंधन हेतु प्राधिकृत नियंत्रक नियुक्त किये जाने के संबंध में प्रकरण को शासन संदर्भित कर दिया गया।

> संस्था प्रबन्धक ने निदेशालय द्वारा निर्गत धारा-16 डी-3 की नोटिस के विरुद्ध एक याचिका संख्या 32169/2023 व शिकायतकर्ता द्वारा एक याचिका संख्या 20059/2023 योजित की गयी उक्त दोनों मान० उच्च न्यायालय द्वारा सम्बद्ध करते हुये अपने निर्णय दिनांक 31-01-2024 द्वारा उपरोक्त याचिकाओं को खारिज कर दिया गया।

> संस्था प्रबंध समिति ने अपना पक्ष शासन के समक्ष दिनांक 27.04.2024 को सम्पन्न सुनवाई बैठक में प्रस्तुत किया गया जिसके सापेक्ष शासन ने संस्था प्रबन्धक की व्यक्तिगत सुनवाई किये जाने के उपरांत द्वारा शासन को प्रस्तुत किये गये अभिकथन पर संस्तुति उपलब्ध कराये जाने के सबंध में निर्देशित किया गया।

7- इस सम्बन्ध में उल्लेखनीय है क़ि संस्था प्रबंधतंत्र द्वारा संस्था की वित्तीय परिसंपत्तियों को विभागीय वित्तीय नियमों के विपरीत जाकर नगद कैश के रूप में लेन-देन किया गया। उक्त नगद लेन देन मे प्रबंधतंत्र यह स्पष्ट करने में असफल रहा कि, लेन देन की गयी धनराशि संस्था हित में की गयी थी अथवा व्यक्तिगत? यदि संस्था प्रबंधतंत्र द्वारा वित्तीय नियमों के अनुरूप धनराशि का अंतरण बैंक अथवा सरकार द्वारा प्रचलित प्रक्रियाओं (ई-पेमेंट, चेक आदि) के माध्यम से किया जाता तो यह प्रमाणित हो सकता था कि संस्था की निधि किसको अंतरित की गयी व किस प्रयोजन हेतु ? किन्तु उक्त स्थिति के विपरीत जाकर संख्था प्रबंधतंत्र ने जानबूझकर संस्था निधि को वित्तीय नियमों के विपरीत लेन देन किया गया जोकि

वित्तीय अनियमितता की श्रेणी में आता है, जिस हेतु संस्था की परिसंपत्तियों के प्रबंधन हेतु इंटरमीडियट शिक्षा अधिनियम 1921 की धारा 16 डी (4) के अधीन् प्राधिकृत नियंत्रक नियुक्त किये जाने के सम्बन्ध में शिक्षा निदेशक, माध्यमिक, उ०प्र० प्रयागराज द्वारा शासन को की गयी संस्तुति उचित है।

8-उक्त के अतिरिक्त शिक्षा निर्देशक, माध्यगिक द्वारा अपनी संस्तुति में शासन को यह भी अवगत कराया गया है कि श्री प्रदीप कुमार सिंघल, प्रबन्धक, हिन्दू इण्टर कॉलेज, कांधला, शामली द्वारा अपनी स्वास्थ्य सम्बन्धी समस्याओं के कारण दिनांक 18.01.2024 को उपाध्यक्ष, प्रबन्ध समिति, हिन्दू इण्टर कालेज, कांधला शामली को अपना त्याग-पत्र प्रस्तुत किया गया। फलतः प्रबन्ध समिति की दिनांक 29.01.2024 को आहूत बैठक में श्री प्रदीप कुमार सिंघल का त्याग पत्र स्वीकार करते हुए शेष अवधि के लिए प्रबन्धक का कार्यभार साधारण सभा के आजीवन सदस्य श्री आकाश कुमार सिंघल को दिये जाने का विनिश्चय किया गया। प्रबन्ध समिति के उपरोक्त प्रस्ताव के आधार पर जिला विद्यालय निरीक्षक, शामली की आख्यानुसार विद्यालय की स्वीकृत / अनुमोदित प्रशासन योजना की धारा-10 (1) में निहित व्यवस्थानुसार शेष अवधि हेतु श्री आकाश कुमार सिंघल के हस्ताक्षर संस्था प्रबन्धक के रूप में जिला विद्यालय निरीक्षक, शामली द्वारा प्रमाणित कर दिये गये।

9-प्रकरण में पूर्व में मण्डलीय संयुक्त शिक्षा निदेशक, सहारनपुर की आख्या दिनांक 27.06.2024 के साथ प्राप्त संस्था हिन्दू इण्टर कालेज, कांधला, शामली की अनुमोदित / स्वीकृत प्रशासन योजना की धारा-10 (1) में उल्लिखित है कि "समिति के सदस्यों (पदेन सदस्यों से भिन्न) या समिति के पदाधिकारियों के पद में होने वाली किसी आकस्मिक रिक्ति की पूर्ति समिति द्वारा कार्यकाल की शेष अवधि के लिए की जाएगी और इस प्रकार नियुक्त व्यक्ति उस शेष काल के लिए संमिति का सदस्य या पदाधिकारी (जैसी भी दशा हो) होगा, जिसके लिए वह व्यक्ति रहता, जिसके स्थान की वह पूर्ति करता है। ऐसी रिक्ति की पूर्ति हेतु पदेन तथा मनोनीत सदस्य भी वोट देने के अधिकारी होंगे।"

10-उपरोक्त अनुमोदित/स्वीकृत प्रशासन योजना में समिति का तात्पर्य स्कूल की प्रबंध समिति से है का उल्लेख है। इस प्रकार जिला विद्यालय निरीक्षक, शामली द्वारा विद्यालय में सर्वप्रथम श्री प्रदीप कुमार सिंहल की दिनांक 29.01.2024 को त्याग-पत्र से फलित आकस्मिक रिधि पर साधारणसभा के सदस्य श्री आकाश कुमार सिंहल के चयन को अनुमोदित करते हुए उनके हस्ताक्षर प्रमाणन की कार्यवाही की गयी, जो विद्यालय की अनुमोदित/स्वीकृत प्रशासन योजना से निम्न कार्यवाही है। श्री आकाश कुमार सिंहल साधारण सभा के पदेन सदस्य है, जबकि संस्था की अनुमोदित / स्वीकृत प्रशासन योजना के अंतर्गत प्रबन्ध समिति के सदस्यों या पदाधिकारियों से ही प्रबन्धक के पद की आकस्मिक रिक्ति की पूर्ति की जानी थी। इस प्रकार जिला विद्यालय निरीक्षण, शामली द्वारा की गयी उपरोक्त कार्यवाही अनुमोदित / स्वीकृत प्रशासन योजना के विपरीत है।

11-मा० उच्च न्यायालय द्वारा रिट याचिका सी० संख्या-6941/2025 में पारित आदेश दिनांक 19.03.2025 के अनुपालन में शासन स्तर पर आहूत सुनवाई बैठक दिनांक 07.05.2025 एवं दिनांक 14.05.2025 में याची प्रबंध समिति / प्रबंधक द्वारा प्रस्तुत किये गये मौखिक एवं लिखित पक्ष/तर्क (जिनका उल्लेख प्रस्तर-5 में किया गया है) उपर्युक्त प्रस्तर-6 से 10 में वर्णित वस्तुस्थिति एवं तथ्यों के दृष्टिगत पूर्णतः आधारहीन एवं बलहीन है।

12-अतः मा० उच्च न्यायालय द्वारा रिट याचिका सी० संख्या-6941/2025 में पारित आदेश दिनांक 19.03.2025 के अनुपालन में शासन सार पर आहूत सुनवाई बैठक दिनांक 07.05.2025 एवं दिनांक 14.05.2025 में याची प्रबंध समिति / प्रबंधक द्वारा प्रस्तुत किये गये मौखिक एवं लिखित पक्ष/तर्क उपर्युक्त प्रस्तर-6 से 10 में वर्णित वस्तुस्थिति एवं तथ्यों के दृष्टिगत पूर्णतः आधारहीन एवं बलहीन होने के कारण संख्या हिंदू इंटर कॉलेज, कांधला, शामली की प्रबंध समिति के विरुद्ध माध्यमिक शिक्षा अधिनियम, 1921 की धारा 16 डी (4) के अंतर्गत प्रबन्ध तंत्र को अतिक्रमित करते हुए संस्था एवं उसकी परिसम्पत्तियों के प्रबन्धन हेतु जिला बेसिक शिक्षा अधिकारी, शामली (पदेन) को श्री राज्यपाल इस शर्त के साथ छ (06) माह हेतु प्राधिकृत नियंत्रक नियुक्त करते हैं कि प्राधिकृत नियंत्रक द्वारा निर्धारित समयावधि में संस्था में व्याप्त अनियमितताओं का निराकरण करते हुए संस्था में मान्य प्रबन्ध समिति के गठन की कार्यवाही की जाएगी।"

30. After perusal of the aforesaid impugned order dated 19.05.2025, by which an authorized controller has been appointed in the school due to alleged financial irregularities. As per the pleadings and material on record in the instant matter,

an audit report dated 25.01.2022 was submitted by the Divisional Finance and Account Officer, office of Joint Director of Education, Saharanpur before Joint Director of Education, subsequently it was forwarded to Director of Education (Secondary), Prayagraj vide letter dated 03.02.2022. In pursuance of it, the Additional Director of Education (Secondary), Uttar Pradesh issued a notice on 25.02.2022 to the petitioner and sought the explanation within 30 days. The Additional Director of Education (Secondary), U.P. made a report on 11.12.2024 and same was submitted to Deputy Secretary, U.P. The Director of Education (Secondary), U.P. made a report on 07.02.2025 and submitted to Special Secretary (Secondary Education), U.P. After considering the aforesaid reports, the State Government passed an order dated 19.02.2025. The said order was challenged in the High Court vide Writ Petition No.6941 of 2025. The Co-ordinate Bench quashed the order dated 19.02.2025 passed by the Government vide order dated 19.03.2025 on the ground that the aforesaid both reports dated 11.12.2024 and 07.02.2025 were not supplied to the petitioners. It was further directed to pass fresh order in accordance with law.

31. In pursuance of the aforesaid order dated 19.03.2025 passed by the Co-ordinate Bench, the Government of U.P. has issued notice dated 02.05.2025 to the petitioners and called for explanation and date was fixed for hearing on 07.05.2025 at 3.30 p.m. in the office of Special Secretary (Secondary Education). On 07.05.2025, petitioners appeared and sought the time for filing his reply of show cause and next date was fixed on 14.05.2025. On 14.05.2025, the D.I.O.S., Shamli and the petitioners appeared before the Special Secretary. The petitioners submitted their oral submissions as well as written submissions before the Special Secretary, then the impugned order dated 19.05.2025 was passed by which an authorized controller has been appointed for period of six months.

32. Learned Senior Counsel for the petitioners has contended that requirement of recording reasons mentioned in Sub-Section (4) of Section 16(D) of the Act has not complied with. After perusal of aforesaid facts, the petitioners had been given opportunity for hearing and for submitting the explanation before the Special Secretary. The officer concerned after taking into the consideration the explanation and material on record before him rejected the explanation of the petitioners and passed the impugned order. Recording of reasons is preceded by consideration of the explanation followed by agreement or disagreement with the explanation submitted by the Management. Reasons recorded in that behalf would not constitute compliance of sub-section (4) of Section 16(D) of the Act. It is settled law that Administrative Authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the Administrative Authority; short reasons that weight with them to take action need to be recorded. It is seen that the order at law is an elaborate one and from the record it is seen that the Secretary has given opportunity to all the parties to explain their cases. After consideration of the explanation of the petitioners as well as audit reports and other reports submitted in the competent officials of the education department, passed the impugned order.

33. It is settled law that High Court exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to

see whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. When the facts do exist on record and Government have applied their mind to those facts and came to the conclusion that from the facts so collected they were satisfied that the Committee had contravened clauses (v) and (vi) of Sub-Section (3) of Section 16-D of the Act , they have rightly exercised the power under Sub-Section (4) of Section 16D of the Act.

Conclusions:-

34. In the case at hand, after perusal of the records and pleadings, I am satisfied that the State Government before passing the impugned order, have put the Committee of Management to notice and the Committee of Management duly replied to the notice and also presented its case before the Special Secretary as discussed above. Under these circumstances, I am of the view that there are no illegality or errors in the impugned order dated 19.05.2025 passed by the Special Secretary, Govt. of U.P. After taking into consideration of the material, I am also of the view that the Committee should not be allowed to be in the management of the institution. Accordingly, the Authorized Controller is directed to immediately take over the Management of the institution and set right the running of the institution on proper line, then conduct the election within the period prescribed under the Act and hand over the management to newly elected body.

35. The instant writ petition is accordingly, ***dismissed***.

(2025) 9 ILRA 468
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 23.09.2025

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 35876 of 2022
&
Connected With Other Cases

Ved Prakash Saini & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Sudeep Harkauli

Counsel for the Respondents:
Archit Mandhyan, C.S.C., Chandra Shekhar Singh, Suresh C. Dwivedi

ISSUE FOR CONSIDERATION

Whether landowners who did not initially file references under Section 18 of the Act, 1894, can seek redetermination of compensation under Section 28-A based on enhanced awards granted to similarly situated landowners under the same acquisition notification ?

HEADNOTE

Land acquisition - Re-determination of compensation - Land Acquisition Act, 1894, Section 28-A - Beneficent legislation with the object to remove inequality in compensation - Landowners not filing reference under Section 18 held eligible to seek re-determination - Limitation under Section 28-A computed from the award relied upon for redetermination and not from earlier set-aside awards - Right of landowners to rely upon subsequent award granting higher compensation recognized - persons entitled to apply under Section 28-A are not restricted to relying only on the earliest award but can invoke the provision on the basis of any subsequent award granting higher compensation, provided the application is filed within three months thereof - Objection of limitation raised by acquisition beneficiary/KUMS

rejected - Earlier enhancement order of 1990 having been set aside could not form basis for limitation - Acceptance of compensation without protest not a bar - Entitlement to statutory benefits including solatium, additional compensation and interest affirmed - Direction for implementation issued - Writ petition by landowners allowed.

HELD

Court held that Section 28-A of the Land Acquisition Act, 1894 is a beneficent provision which must be interpreted liberally to achieve its object of removing inequality in compensation awards; that the limitation period for filing applications under Section 28-A commences from the date of the award on which the applicant relies for redetermination and not from any earlier award; that the landowners' applications dated 26.04.2016 were well within the prescribed period of three months from the Reference Court's award dated 30.01.2016; that the order dated 17.02.2022 passed by the Special Land Acquisition Officer granting enhanced compensation at the rate of Rs.108/- per square metre along with statutory benefits was legally sound and deserved implementation; and that the objections raised by the Krishi Utpadan Mandi Samiti regarding limitation and maintainability lacked merit and were contrary to established legal principles. Consequently, the leading writ petition filed by the landowners was allowed and the connected writ petitions filed by the Krishi Utpadan Mandi Samiti were dismissed, with a direction to the Krishi Utpadan Mandi Samiti to comply with the order dated 17.02.2022 and deposit the enhanced compensation along with statutory benefits within six weeks, failing which the amount would carry interest at the rate of 12% per annum from the date of default until actual payment; it was further declared that the landowners were entitled to enhanced compensation at Rs.108/- per square metre together with 30% solatium, 12% additional compensation and interest at the prescribed rates, and the writ petitions were disposed of accordingly, without any order as to costs. (Paras 8, 9)

Writ petitions by acquisition body/KUMS dismissed. (E-5)

CASE LAW CITED

Union of India v. Pradeep Kumari, (1995) 2 SCC 736

Union of India v. Hansoli Devi, (2002) 7 SCC 273

Banwari v. Haryana State Industrial & Infrastructure Development Corpn. Ltd., 2025 AIR (SC) 165

Narendra v. State of U.P., (2017) 9 SCC 426

National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680;

Ramsingbhai (Ramsangbhai) Jerambhai v. State of Gujarat and another, (2018) 16 SCC 445

List of Acts

Land Acquisition Act, 1894

List of Keywords

Land acquisition — Section 28-A — Re-determination of compensation — Beneficent legislation — Limitation — Subsequent enhancement award — Same notification — No reference under Section 18 — Acceptance of compensation — Equality in compensation — Statutory benefits — Solatium — Interest — Acquisition beneficiary — Writ jurisdiction

CASE ARISING FROM

Order dated 17.02.2022 passed by the Special Land Acquisition Officer, Moradabad,4 under Section 28-A of the Act, 1894.

Appearances for Parties

Advs For Petitioner: Sudeep Harkauli, Suresh C. Dwivedi; Ravi Prakash Pandey

Advs For Respondents: C.S.C.;

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri Sudeep Harkauli, learned counsel for the land-owners (petitioners in the WRIT-C No. 35876 of 2022 and respondents in all other connected writ petitions filed by the Krishi Utpadan Mandi Samiti1 mentioned at Serial Nos.2 to 10), Shri Suresh C. Dwivedi, learned counsel for the Krishi Utpadan Mandi Samiti and Shri Devesh Vikram, learned Additional Chief Standing Counsel and Shri Fuzail Ahmad Ansari,

learned Standing Counsel for the State-respondents.

2. Since all the afore-noted writ petitions involve a common legal issue,, i.e. **whether landowners who did not initially file references under Section 18 of the Act, 1894, can seek redetermination of compensation under Section 28-A based on enhanced awards granted to similarly situated landowners under the same acquisition notification,** with the consent of learned counsel for the parties, all the afore-noted petitions have been clubbed and heard together and are being disposed of by this common judgment. The WRIT-C No. 35876 of 20222 is made the leading writ petition.

A. PRAYERS:

The Leading Writ Petition:-

3. This writ petition has been filed, *inter alia*, praying for a writ, order, or direction in the nature of **mandamus**, directing the KUMS to decide the representation of the petitioners/landowners dated 03.09.2022. It is further prayed that a direction in the nature of **mandamus** be issued to the KUMS to deposit the money mentioned in the letter dated 15.03.2022 and to comply with the orders passed under Section 28-A of the Land Acquisition Act, 18943.

Writ Petitions filed by the KUMS mentioned at Serial Nos.2 to 10:-

3.1 The writ petitions at Serial Nos. 2 to 10 have been filed, *inter alia*, seeking a direction in the nature of **certiorari** to quash the impugned order dated 17.02.2022 passed by the Special Land Acquisition Officer, Moradabad,4 under Section 28-A of the Act, 1894. It is further prayed that a direction in the nature of **mandamus** be issued restraining the SLAO from compelling the KUMS to deposit the amount of compensation as re-determined by the impugned judgment and order dated 17.02.2022.

B. FACTUAL MATRIX OF THE CASE:

4. That the brief facts of the case are that the KUMS, Moradabad had made a proposal for acquiring 47.98 ½ acres of land situated at village Majhola, Tehsil and District Moradabad for the purpose of construction of a Market Yard by the Krishi Utpadan Mandi Samiti, Moradabad. Pursuant to such proposal, after making preliminary enquiries and preparing compensation statements, the State Government issued a notification under Section 4(1)/17(4) of the Act, 1894 on 30.04.1977, which was duly published on 14.05.1977 for acquiring the land of the landowners situated in village Majhola, Tehsil and District Moradabad. Thereafter, a declaration under Section 6(1)/17 of the Act, 1894 was also issued on the same date i.e. 30.04.1977 and was published on 14.05.1977.

4.1. The possession of the acquired land was thereafter taken by the acquiring body/ KUMS on 10.07.1977 and the award was declared by the SLAO, Moradabad under Section 11 of the Act, 1894 on 09.08.1982. The compensation was determined at the rate of Rs.15.75 per square yard. However, some of the tenure holders were dissatisfied with the compensation awarded by the SLAO vide award dated 09.08.1982. Accordingly, one Land Acquisition Reference No.59 of 1983 came to be filed by a tenure-holder namely

Moti, who subsequently died and was substituted by his heir Yad Ram. The said Land Acquisition Reference was rejected by order dated 03.02.1989 passed by the learned 1st Additional District Judge, Moradabad. Similarly, other Land Acquisition References filed by tenure holders, namely L.A.R. Nos.65 of 1983, 128 of 1983 and 64 of 1983, were also rejected by the Reference Court vide judgment dated 03.02.1989.

4.2 Thereafter review applications were filed by the landowners/ tenure holders/ claimants in respect of the aforesaid references which had been rejected on 03.02.1989. The said review applications were filed *inter alia* on the grounds that there was an apparent error on the face of the record and further on the ground that other Land Acquisition Reference Cases being L.A.R. Nos.63 of 1983, 55 of 1983 and 57 of 1983 had been decided on 24.03.1989 whereby the learned Reference Court allowed compensation at the rate of Rs.64/- per square metre. These review applications were registered as Misc. Case No.9 of 1989 (Hori Lal and others vs. KUMS and another), Misc. Case No.10 of 1989 (Yad Ram vs. KUMS and others), Misc. Case No.11 of 1989 (Gulab Singh and others vs. KUMS and others) and Misc. Case No.12 of 1989 (Jagram vs. KUMS and others). The learned 1st Additional District Judge, Moradabad/Reference Court allowed the said review applications vide judgment and order dated 14.03.1990 and enhanced the compensation of the acquired land to Rs.64/- per square metre, along with statutory benefits of 30% solatium and 9% interest.

4.3. Subsequently, the KUMS challenged the awards of the Reference Court granting compensation @ Rs.64/- per square metre by filing various first appeals before this Hon'ble Court. First Appeal No.522 of 1993 (KUMS vs. Khusi Ram and others) was decided on 26.02.2004, whereby the appeal filed by KUMS was allowed and the matter was remanded to the Reference Court for fresh determination of market value. Similarly, other first appeals were also filed, such as First Appeal No.295 of 1990 (KUMS vs. State of U.P. and others) arising out of L.A.R. No.71 of 1983, which was allowed on 05.04.2004, and First Appeal No.193 of 1991 filed against the order dated 14.03.1990 in L.A.R. No.59 of 1983 (Moti through L.Rs. Yad Ram vs. State of U.P.), which too was allowed on 05.04.2004, whereby this Hon'ble High Court remitted the matters to the Reference Court with a direction to re-determine the compensation.

4.4. In compliance of the aforesaid directions of this Hon'ble High Court, the Reference Court re-opened the matters and proceeded afresh. Vide judgment dated 30.01.2016, it decided L.A.R. Nos.60 of 1983 (Ram Prasad vs. State of U.P.), 64 of 1983 (Jagram vs. State of U.P.), 65 of 1983 (Hori Lal vs. State of U.P.) and 58 of 1983 (Jhabban Singh and others vs. State of U.P. and others), awarding compensation at the rate of Rs.108/- per square metre. Subsequently, vide judgment dated 19.09.2017 in L.A.R. No.59 of 1983 (Moti through L.R. Yad Ram vs. State of U.P. and others), similar compensation @ Rs.108/- per square metre was awarded.

4.5. Against the orders of the Reference Court dated 30.01.2016 and 19.09.2017, the KUMS preferred First Appeals before this Hon'ble Court, which were numbered as First Appeal Nos.246 of

2016, 229 of 2016, 233 of 2016, 231 of 2016 and 230 of 2016, and all of which came to be dismissed vide common judgment dated 05.02.2020. First Appeal No.26 of 2018 filed against the order dated 19.09.2017 in L.A.R. No.59 of 1983 was also dismissed on 08.02.2021, following the decision dated 05.02.2020.

4.6 The judgment of this Hon'ble Court dated 05.02.2020 was challenged by the KUMS before the Hon'ble Apex Court by filing Special Leave to Appeal (C) No.8759 of 2020, which too was dismissed by the Hon'ble Apex Court on 26.10.2020.

4.7. Thereafter, claimants/ landowners moved applications before the SLAO, Moradabad on 10.02.2021 for disposal of their applications filed under Section 28-A, notices were issued to the KUMS calling for objections. The KUMS filed detailed objections on 01.11.2021 and 25.11.2021 raising the plea of limitation and maintainability of the application under Section 28-A. Thereafter, the SLAO, Moradabad proceeded to pass the impugned order dated 17.02.2022 allowing the applications under Section 28-A of the Act, 1894, whereby the compensation was re-determined at Rs.108/- per square metre along with statutory benefits, solely relying upon the Reference Court's award dated 19.09.2017 in L.A.R. No.59 of 1983, and thereby enhanced compensation was accorded to the landowners for their acquired land.

4.8. Consequently, the petitioners preferred the leading writ petition for compliance of the aforesaid order dated 17.02.2022. The KUMS has preferred the writ petitions noted above at Serial Nos.2 to 10 for quashing of the impugned order dated 17.02.2022. The writ petitions preferred by the KUMS were dismissed by the writ court vide order dated 12.12.2022 and the leading writ petition was disposed of on 14.03.2023. The said orders were challenged before the Apex Court in Civil Appeal Nos. 12973–12980/2024 and other connected appeals, in which Honble Apex Court has clarified that Section 28A(3) can only be invoked by aggrieved claimants, and not by the acquisition beneficiary. Consequently, the High Court's orders were set aside by the Apex Court by order dated 21.11.2024, and the matters were remitted for fresh consideration on merits, with all issues left open. In light of the order dated 21.11.2024 passed in Civil Appeal No. 12973 of 2024 [@ SLP (CIVIL) NO.9683/2023], a report was placed before the learned Registrar General for restoring the instant matters, whereupon the same have been restored.

4.9. The facts noted above have not been disputed by the parties.

C. <u>SUBMISSIONS</u>:

5. **Shri Sudeep Harkauli,** learned counsel for the landowners, **in support of the leading writ petition,** submits that this petition has been filed seeking implementation of the order dated 17.02.2022 passed in eight separate applications under Section 28-A moved by the landowners, wherein it was held that their land had been acquired under the same notification as that of other landowners who were granted enhanced compensation by the Reference Court vide order dated 30.01.2016. Consequently, the landowners were found entitled to compensation at the enhanced rate of Rs.108/- per sq. mtr. along with 30% solatium, 12% additional compensation, and interest at the rate of 9% from the date

of possession for the first year and 15% thereafter till actual payment. Despite the lapse of eight months, no payment has been made, although the order has not been challenged before any court. Hence, in the absence of any interim order, the KUMS is duty-bound to comply, and the leading writ petition deserves to be allowed.

5.1. **Shri Sudeep Harkauli, learned counsel for the landowners, in opposition of the writ petitions noted at Sl. Nos. 2 to 10 filed by the KUMS,** submits that the sole objection raised by the KUMS before the SLAO as well as before this Hon'ble Court is that the applications under Section 28-A were not filed within the statutory period of three months, contending that since the first order of enhancement was passed on 14.03.1990, the applications ought to have been filed within three months thereof. He submits that this objection is wholly misconceived and unsustainable, as the said order was challenged by the KUMS in First Appeal and was set aside by this Hon'ble Court, thereby ceasing to exist and hence cannot be relied upon for computing limitation under Section 28-A. He further submits that the controversy in hand is no more *res integra* and stands conclusively settled by the Hon'ble Apex Court in ***Banwari and others v. Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) and another***[5]**,** wherein it has been clarified that applications may be filed within three months of any reference order relied upon by the landowners. In the present case, the landowners relied on the order dated 30.01.2016 and filed their applications on 26.04.2016, well within limitation. As no other objection has been raised, it is evident that the connected petitions lack merit and deserve dismissal.

5.2. Lastly, **Shri Sudeep Harkauli, learned counsel for the landowners,** submits that the landowners have been running from pillar to post since 2016 and despite the order dated 17.02.2022, the respondent–KUMS has failed to accord them the benefit.

6. **Shri Suresh C. Dwivedi, learned counsel for the KUMS** submits that the impugned order dated 17.02.2022 passed by the SLAO, Moradabad is wholly illegal, arbitrary, and liable to be set aside. It is argued that the claimants accepted the compensation determined in 1982 without protest and did not prefer any reference under Section 18 of the Land Acquisition Act. Even when compensation was enhanced by the Reference Court in 1990, and again in 2016, the claimants did not file any application under Section 28-A of the Act, 1894 within the prescribed period of 90 days. Instead, they remained silent for nearly 27 years and moved an application only on 18.12.2017 after the order dated 19.09.2017. Such a delayed application is clearly barred by limitation and cannot be entertained. The SLAO failed to appreciate this vital aspect and decided the matter mechanically without recording any finding on limitation or considering the KUMS' objections. Furthermore, interest on enhanced compensation cannot be awarded under Section 28-A, as the Collector has no such power. It is settled law that stale claims cannot be revived after inordinate delay, and public authorities cannot be financially burdened for the negligence of the claimants. Hence, the impugned order dated 17.02.2022 deserves to be quashed.

6.1. **Shri Devesh Vikaram, learned Additional Chief Standing Counsel for the State-respondents**

supports the arguments advanced by learned counsel for the KUMS.

D. DISCUSSION AND FINDINGS:

7. Having heard the learned counsel for all parties and having perused the record, this Court finds that the present case involves the fundamental question of whether landowners who did not initially file references under Section 18 of the Act, 1894, can seek redetermination of compensation under Section 28-A based on enhanced awards granted to similarly situated landowners under the same acquisition notification. The resolution of this issue requires a careful examination of the statutory provisions, the object and purpose of Section 28-A, and the authoritative pronouncement of the Hon'ble Supreme Court in **Banwari and others** (supra).

7.1. Before delving into the specific contentions raised, it is imperative to understand the legislative intent behind Section 28-A of the Act, 1894. For ready reference, Section 28 of the Act, 1894 is reproduced herein below:

"28. Collector may be directed to pay interest on excess compensation.- *If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum]* [6] *per annum from the date on which he took possession of the land to the date of payment of such excess into Court:*

[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.] [7]

[28-A. Re-determination of the amount of compensation on the basis of the award of the Court[8] *.- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:*

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.]".

7.2. As eloquently observed by the Hon'ble Apex Court in **Union of India and another vs. Pradeep Kumari and Others**[9] case (which has been reaffirmed in Banwari' case), Section 28-A is a beneficent provision enacted to address the inherent inequality in compensation awards that arose due to the inability of inarticulate and poor landowners to effectively utilize the reference mechanism under Section 18 of the Act, 1894. The Statement of Objects and Reasons reveals that the primary objective underlying Section 28-A is to remove disparity in compensation payments for lands of similar quality and characteristics that fall under the same acquisition notification. This provision recognizes the harsh reality that while some landowners, owing to their resources, awareness, and access to legal counsel, could successfully challenge inadequate compensation awards through references, others - particularly the poor, illiterate, and marginalized sections of society - remained deprived of just compensation despite owning land of identical or similar quality.

7.3. The Hon'ble Apex Court in **Banwari and others (supra)** has categorically held that Section 28-A being a beneficent legislation must be construed liberally to advance its policy objective of extending benefits rather than adopting a restrictive interpretation that would curtail the relief intended to be provided. This principle of beneficial construction demands that courts should not, through judicial interpretation, read words into the statute that are not present therein, particularly when such reading would restrict the scope and amplitude of the beneficial provision. As observed in **Pradeep Kumari** (supra) and reiterated in **Banwari and others (supra),** that ***"in the matter of construction of a beneficent provision it is not permissible by judicial interpretation to read words which are not there and thereby restrict the scope of the said provision."*** This fundamental principle must guide our interpretation of Section 28-A in the present case.

7.4. The primary contention raised by the KUMS relates to the question of limitation, arguing that applications under Section 28-A should have been filed within three months of the first enhancement order dated 14.03.1990. This argument is fallacious as it demonstrates a fundamental misunderstanding of both the statutory provision and the judicial precedents. The Hon'ble Supreme Court in **Banwari and others** (supra) has conclusively settled this controversy by holding that the limitation period under Section 28-A commences from the date of the specific award on the basis of which redetermination is sought, not from the date of any earlier award that may have been subsequently challenged or set aside. The Court observed that **"the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which redetermination of compensation is sought."**

7.5. Applying the principles laid down in **Banwari and others** (supra) to the facts of the present case, it is undisputed

that all the lands in question were acquired under the same notification dated 30.04.1977. This satisfies the fundamental requirement that the person seeking benefit under Section 28-A must be interested in land covered by the same notification as that of the landowner who obtained enhanced compensation. The Reference Court vide judgment dated 30.01.2016 awarded enhanced compensation at Rs.108/- per square metre to similarly situated landowners. This award was upheld by this Court and subsequently by the Hon'ble Apex Court, attaining finality. The landowners filed their applications under Section 28-A on 26.04.2016, well within three months of the Reference Court's judgment dated 30.01.2016. This satisfies the limitation requirement as interpreted in **Banwari and others** (supra). Additionally, the landowners had not filed any reference under Section 18, which is a prerequisite for invoking Section 28-A.

7.6. The KUMS' argument that limitation should be computed from date of the order dated 14.03.1990 is legally untenable for multiple reasons. First, the order dated 14.03.1990 was successfully challenged by the KUMS itself in First Appeals, which were allowed by this Court, thereby setting aside the said order. An order that has been judicially annulled cannot serve as the foundation for computing limitation for subsequent proceedings. Second, as clarified in **Banwari and others** (supra), the cause of action for a Section 28-A application arises from the specific award on which the applicant relies for redetermination. In the present case, the landowners specifically relied upon the award of the year 2016, not any order of the year 1990. Third, accepting the KUMS' argument would lead to the absurd situation where landowners would be required to file applications based on awards that were subsequently set aside, rendering the entire exercise futile.

7.7. The Hon'ble Supreme Court in **Pradeep Kumari** (approved in **Banwari and others**) has addressed scenarios similar to the present case where multiple awards are rendered at different times. The Hon’ble Apex Court held that persons entitled to apply under Section 28-A are not restricted to relying only on the earliest award but can invoke the provision based on any subsequent award that grants higher compensation, provided the application is filed within three months of such award. This interpretation serves the beneficial purpose of the legislation by ensuring that landowners are not penalized for circumstances beyond their control, such as becoming aware of enhancement awards at different times or relying on awards that provide better compensation.

7.8. The KUMS' contention that these are "stale claims" after 27 years is misconceived. The concept of stale claims typically applies to situations where parties sleep over their rights for unreasonably long periods without justifiable cause. However, in the present case, the landowners could not have filed applications under Section 28-A until a valid, final award granting enhancement was available. The 1990 award was challenged and set aside, making it impossible to rely upon. The landowners promptly filed their applications within three months of the 2016 award, demonstrating diligence rather than negligence. The delay, if any, was occasioned by the prolonged litigation initiated by the KUMS itself, and it would be inequitable to penalize landowners for delays caused by the acquiring body's own actions.

7.9. The argument that public authorities should not bear financial burden

due to negligence of landowners/claimants is misplaced in the present context. Section 28-A was enacted precisely to address situations where landowners, due to various constraints, could not initially challenge inadequate compensation. The legislative intent is clear - to ensure that all landowners under the same acquisition receive equitable compensation regardless of their initial ability to pursue legal remedies. Moreover, as observed in **Banwari and others (supra),** the provision serves the inarticulate and poor, who form a significant portion of landowners affected by acquisitions. Denying them the benefit of enhanced compensation would perpetuate the very inequality that Section 28-A was designed to eliminate.

7.10. Regarding the KUMS' objection to the award of interest, it is well-settled that when compensation is enhanced under Section 28-A, the landowner becomes entitled to statutory benefits including interest as prescribed under the Act, 1894. The SLAO's power to redetermine compensation necessarily includes the authority to grant consequential benefits that flow from such redetermination. The KUMS' allegation that the SLAO decided the matter "mechanically" is unfounded. A perusal of the impugned order dated 17.02.2022 reveals that the SLAO carefully considered the applications, issued notices to all concerned parties, heard their objections, and applied the correct legal principles. The decision to grant enhanced compensation based on the Reference Court's award was legally sound and well-reasoned.

7.11. The Hon'ble Supreme Court in **Banwari and others** (supra) has comprehensively addressed and resolved the apparent conflict between the judgments in **Union of India v. Pradeep Kumari and Others** (supra) and **Ramsingbhai (Ramsangbhai) Jerambhai v. State of Gujarat and another**[10]. The Hon'ble Apex Court observed that both cases were decided by Benches of equal strength comprising three learned Judges, with **Pradeep Kumari** being rendered on 10th March 1995 and **Ramsingbhai** on 24th April 2018. However, upon careful analysis, the Court noted that the Ramsingbhai judgment failed to take note of the earlier view taken by the three-Judge Bench in **Pradeep Kumari**, making it a case decided *per incuriam*. The Apex Court emphasized that Pradeep Kumari, being earlier in point of time and having elaborately considered the relevant statutory provisions of Section 28-A of the Act, 1894, along with its Statement of Objects and Reasons and principles of beneficial interpretation, would constitute the binding precedent. In contrast, the **Ramsingbhai (supra)** judgment was characterized as a "short judgment" that merely referred to the text of Section 28-A(1) without the comprehensive analysis undertaken in **Pradeep Kumari (supra)**.

7.12. Relying on the Constitution Bench decision in **National Insurance Company Limited v. Pranay Sethi and others**[11]**,** the Hon'ble Apex Court reiterated that an earlier decision of a co-equal Bench binds subsequent Benches of the same strength, and a judgment can be considered *per incuriam* when it cannot be reconciled with a previously pronounced judgment of a co-equal Bench. Consequently, the Apex Court held that **Pradeep Kumari (supra)**, having undertaken elaborate consideration of the beneficent nature of Section 28-A and its interpretative principles, remains the correct legal position, while **Ramsingbhai (supra),** not having considered this

precedent, cannot be treated as laying down the accurate legal principle.

7.13. The Hon'ble Apex Court in another Constitution Bench judgment of **Union of India vs. Hansoli Devi[12],** has also definitively clarified the scope and application of Section 28-A of the Land Acquisition Act, 1894, particularly addressing two fundamental questions that had generated considerable litigation across various High Courts. The Hon'ble Apex Court has categorically held that when a landowner's application seeking reference under Section 18 is dismissed on grounds of delay or other technical reasons, such dismissal amounts to "not filing an application" within the meaning of Section 28-A, thereby preserving the landowner's right to seek benefits under this beneficial provision.

7.14. The Hon'ble Apex Court emphasized that the expression "did not make an application" should be interpreted as "did not make an effective application" that was entertained and resulted in a substantive reference being answered, noting that a time-barred application that does not fructify into any meaningful reference cannot be considered an effective application. Furthermore, the Apex Court has unequivocally ruled that accepting compensation from the Land Acquisition Collector, whether with or without protest, does not disqualify a person from being considered "aggrieved" under Section 28-A, observing that imposing such additional conditions would amount to denying substantial rights not contemplated by the Legislature itself.

7.15. The Apex Court's interpretation ensures that the beneficial nature of Section 28-A is preserved in its true spirit, allowing eligible landowners to seek re-determination of compensation based on enhanced awards obtained by others in similar circumstances, while maintaining the legislative intent of providing relief to those who had not initially sought reference but subsequently became aware of higher compensation awards granted to similarly situated landowners.

7.16. The principles laid down in ***Hansoli Devi*** (supra) also support the case of the petitioners in the present matter. In fact, the case of the landowners herein stands on an even stronger footing than that of ***Hansoli Devi*** (supra), where the landowner had indeed made an application under Section 18 of the Act, 1894, which was dismissed on the ground of delay and laches, but the Hon'ble Apex Court held that such application was not an "effective application" and, considering the beneficial nature of Section 28-A, granted relief. However, in the instant case, the landowners never made any application under Section 18 of the Act, 1894, which makes their position squarely within the protective scope of Section 28-A as interpreted by the Hon'ble Apex Court.

7.17. Beyond the strict legal interpretation, the case also involves fundamental principles of equity and natural justice. It would be manifestly unjust to deny the landowners enhanced compensation when their lands were acquired under the same notification, at the same time, and for the same public purpose as those who received higher compensation. The doctrine of equal treatment demands that similarly situated persons should receive similar compensation for similar lands. The record reveals that all procedural requirements

have been meticulously followed. The landowners filed proper applications, notices were issued to all parties, objections were heard, and a reasoned decision was rendered. The SLAO's order dated 17.02.2022 demonstrates due application of mind and correct appreciation of legal principles.

7.18. While the KUMS raises concerns about financial implications, it must be remembered that compensation for land acquisition is not a gratuitous payment but a constitutional obligation under Article 31 of the Constitution of India. The State's duty to provide just compensation is not diminished by financial considerations. Moreover, Section 28-A serves the larger public policy of ensuring equitable treatment of all landowners affected by acquisition. The fact that the Hon'ble Apex Court in Civil Appeal No. 12973 of 2024 remanded the matter for fresh consideration on merits, with all issues left open, provides this Court with the opportunity to examine the case in light of the settled legal position in **Banwari and others (supra)**. The remand order clarifies that Section 28-A(3) can only be invoked by aggrieved claimants, not by acquisition beneficiaries, further supporting the landowners' case.

7.19. The Hon'ble Supreme Court in **Banwari and others (supra)** has laid down specific conditions which are required to be satisfied for invoking the provisions of Section 28-A(1) of the Act, 1894. In the present case, all these conditions are satisfied comprehensively. These conditions are as follows:

"(i) An award has been made by the Court under Part III of the Act after coming into force of Section 28-A;

(ii) By the said Award, the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not move the application under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which redetermination of amount of compensation is sought; and

(vi) Only one such application can be moved under Section 28-A for redetermination of the compensation by the applicant."

7.20. The Hon'ble Apex Court in **Banwari and others (supra)** has emphasized that the object underlying the enactment of Section 28-A of the Act, 1894 is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act, 1894. The Hon'ble Apex Court observed that this is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the Reference Court under Section 18 of the

Act, 1894. While construing the provisions of such a legislation, the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it.

7.21. The Hon'ble Apex Court has further elaborated that it has to be seen from the point of view of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in court on the date of coming into force of Section 28-A and may not be in a position to know, in time, about enhancement awards. Such persons would be deprived of the benefit extended by Section 28-A if a restrictive interpretation is adopted. Such a construction would result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28-A. The object underlying Section 28-A would be better achieved by giving the expression "an award" in Section 28-A its natural meaning as meaning the award that is made by the court in Part III of the Act, 1894 after the coming into force of Section 28-A.

7.22. The beneficent nature of Section 28-A of the Act, 1894 and the imperative of ensuring equal treatment to similarly situated landowners has also been reinforced by the Hon'ble Apex Court in **Narendra and others vs. State of U.P. and others**[13]**,** wherein the Apex Court emphasized that the spirit underlying Section 28-A mandates that all landowners whose lands are acquired under the same notification should receive fair and equal compensation, regardless of technical limitations in their initial claims. The Hon'ble Apex Court observed that once a particular rate of compensation is judicially determined as fair compensation, the benefit thereof should be extended even to those who could not approach the court or who may have initially claimed lesser compensation due to poverty or other constraints. The Court categorically held that *"once such a fair compensation is determined judicially, all land owners whose land was taken away by the same Notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated."* The Apex Court further emphasized that in matters of compulsory acquisition, landowners are not willing parties and are compelled to surrender their land for public purpose, making it imperative that they receive just and fair compensation without being penalized for technical deficiencies or their inability to claim higher amounts initially. This principle of distributive justice and equal treatment forms the very foundation upon which Section 28-A operates, ensuring that the economically disadvantaged and inarticulate sections of society are not deprived of their rightful compensation merely due to procedural constraints or lack of legal awareness.

E. CONCLUSION:

8. Based on the comprehensive analysis of the legal issues, statutory provisions, and authoritative precedents, this Court arrives at the following conclusions:

(a) Section 28-A of the Act, 1894 is a beneficent provision that must be interpreted liberally to achieve its object of removing inequality in compensation awards.

(b) The limitation period for filing applications under Section 28-A

commences from the date of the award on which the applicant relies for redetermination, not from any earlier award.

(c) The landowners' applications filed on 26.04.2016 were well within the prescribed limitation period of three months from the Reference Court's award dated 30.01.2016.

(d) The SLAO's order dated 17.02.2022 granting enhanced compensation at Rs.108/- per square metre along with statutory benefits is legally sound and deserves implementation.

(e) The KUMS' objections regarding limitation and maintainability lack merit and are contrary to established legal principles.

F. FINAL ORDERS/ DIRECTIONS:-

9. In light of the above findings, this Court hereby:

(i) ALLOWS the leading writ petition (WRIT-C No. 35876 of 2022) filed by the landowners.

(ii) DISMISSES the writ petitions (Serial Nos. 2 to 10) filed by the Krishi Utpadan Mandi Samiti (KUMS).

(iii) DIRECTS the KUMS to immediately comply with the order dated 17.02.2022 passed by the SLAO, Moradabad and deposit the enhanced compensation amount along with statutory benefits within six weeks from today.

(iv) DIRECTS that in case of non-compliance within the stipulated period, the amount shall carry interest at 12% per annum from the date of default until actual payment.

(v) DECLARES that the landowners are entitled to enhanced compensation at Rs.108/- per square metre along with 30% solatium, 12% additional compensation, and interest at the prescribed rates as determined by the SLAO.

10. Before parting, this Court notes with concern the prolonged litigation that has denied the landowners their rightful compensation for over four decades. The wheels of justice, though they grind slowly, must ultimately ensure that justice is not only done but is seen to be done. The beneficial legislation like Section 28-A exists precisely to protect the rights of those who, due to various constraints, cannot initially assert their claims through formal legal processes.

10.1. The judgment in **Banwari and others (supra)** serves as a beacon for courts dealing with similar issues, emphasizing that technical objections cannot be allowed to defeat the substantive rights of landowners, particularly when such objections arise from the very parties who initially challenged and delayed the compensation determination process.

10.2. Finally, this Court expresses the hope that the authorities will implement this order in letter and spirit, ensuring that the landowners receive their due compensation without further delay or harassment. The compensation awarded is not a largesse but a legal entitlement that has been long overdue.

11. The writ petitions are **disposed of** accordingly. No order as to costs.

(2025) 9 ILRA 482
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 47383 of 2003

Rajeshwar Pratap Sahi ...Petitioner
Versus
Addl. Commissioner Gorakhpur & Ors. ...Respondents

Counsel for the Petitioner:

Anil Kumar Rai, Kartikeya Saran, Om Prakash Yadav, S.N. Singh, Sankalp Narain, Srivats Narain

Counsel for the Respondents:

Alok Singh, Bala Nath Mishra, Hausihla Prasad Mishra, Pavan Kumar Yadav, Ram Vishal Mishra, Vivekanand Yadav

Issue for Consideration

Whether, in view of the final judgment of the High Court dated 07.11.1969 quashing the revised notice dated 04.10.1963, the ceiling authorities could have proceeded contrary thereto by issuing fresh notices, registering fresh ceiling cases and declaring land transferred prior to 24.01.1971 as surplus, ignoring binding judicial findings, revenue records, consolidation proceedings, limitation under Section 31 of the Act, and principles governing jurisdiction and natural justice.

Headnotes

Ceiling proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 – First notice dated 21.08.1962 did not include the land which was sold and transferred up to 1961 through registered sale deeds – Prescribed Authority, vide order dated 04.10.1963, directed preparation of a fresh notice which included the land which had been transferred – Said notice challenged in Writ Petition No. 4772 of 1963, which was allowed on 07.11.1969 – High Court held that if a statement has been prepared on the basis of revenue records, that statement should be taken to be correct and that the Prescribed Authority had no jurisdiction to issue a fresh notice – Order dated 04.10.1963 quashed – Judgment attained finality – Findings recorded therein binding on the State – Ceiling authorities could not have proceeded contrary thereto or taken any steps for any reassessment – Ceiling authorities could not have made any enquiry into the sale deeds executed prior to 24.01.1971 – Land transferred prior to the cut-off date could not have been included in any fresh notice — Findings of Consolidation Officer dated 09.02.1983 confirming transfers and revenue records after participation of Naib Tehsildar (Ceiling) – Such findings constituted documentary evidence relating to transfers prior to 24.01.1971 – Proceedings under the Consolidation of Holdings Act, even if by virtue of Section 38-B they do not operate as res judicata, yet they do not lose their evidentiary value – Repeated notices issued – Proceedings initiated against dead persons – Ex parte orders passed without notice – Registration of fresh ceiling cases during pendency of earlier proceedings – An exercise contrary to law – Limitation under Section 31(2) not noticed — Burden wrongly shifted upon petitioner – Findings regarding benami transfers and mutation held perverse — Non-consideration of affidavits and relevant material – Binding effect of earlier judgments and evidence omitted to be considered – Prescribed Authority acted beyond jurisdiction — Impugned orders dated 19.07.1993, 31.03.1995 and appellate order dated 14.10.2003 quashed — Ceiling Case No. 48/18 and Ceiling Case No. 45 annulled . (Paras 73–123)

HELD:

Proceedings were initiated against the petitioner under the U.P. Imposition of Ceiling on Land Holdings Act and an order dated 04.10.1963 was passed by the Prescribed Authority against the father of the petitioner. Father of the petitioner filed Writ Petition No. 4772 of 1963, which was finally allowed vide judgment and order dated 07.11.1969 and the order dated 04.10.1963 passed by the Prescribed Authority was set aside, and he was directed to decide the objections filed by the father of the petitioner on the statement prepared in CLH Form-3. Ceiling authorities and their officials,

being bound by the said findings and the judgment of the High Court, could not have proceeded contrary thereto or taken any steps for reassessment or for initiating any proceedings in respect of the land. Neither could the Prescribed Authority have issued any fresh notice in respect of the said land nor could any examination of the facts relating to the sale deeds executed prior to 24.01.1971 have been undertaken by them after the amending Act came into force. The land which stood transferred prior to 24.01.1971 could not have been made the basis for any fresh notice. Prescribed Authority acted beyond jurisdiction in declaring the land of village Pipra as surplus and illegally included the same in the holding of the original tenure holder and the petitioner by instituting fresh Ceiling Case No. 45 by the impugned order dated 19.07.1993. Consequently, the impugned orders of the Prescribed Authority dated 19.07.1993 and 31.03.1995, as well as the impugned order passed by the Appellate Authority dated 14.10.2003, were quashed and the proceedings of Ceiling Case No. 48/18 and Ceiling Case No. 45 were annulled.

Writ Petition allowed. (E-5)

Case Law Cited

Ramdhar Singh v. Prescribed Authority & Ors., 1994 Supp (3) SCC 702;

Jhandoo v. State of U.P. & Ors., 1977 AWC 318 : 1977 (3) ALR 418;

Arvind Kumar v. State of U.P. & Ors., (2016) 9 SCC 221;

Ravi Yashwant Bhoir v. District Collector, Raigarh & Ors., (2012) 4 SCC 407;

Sama Aruna v. State of Telangana, (2018) 12 SCC 150;

Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor & Ors., 1969 RD 202;

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960;

U.P. Consolidation of Holdings Act, 1954;

List of Keywords

Ceiling proceedings; Fresh notice; Jurisdiction; Binding judgment; Finality; Revenue records; Transfers prior to 24.01.1971; CLH Form-3; Consolidation proceedings; Evidentiary value; Section 38-B; Limitation; Proceedings against dead person; Ex-parte orders; Malice in law; Abuse of power; Article 300-A.

Case Arising From

Orders dated 19.07.1993 and 31.03.1995 passed by the Prescribed Authority and appellate order dated 14.10.2003 passed by the Addl. Commissioner, Gorakhpur.

Appearances for Parties

Advs For the Petitioner:

Anil Kumar Rai, Kartikeya Saran, Om Prakash Yadav, S.N. Singh, Sankalp Narain, Srivats Narain

Advs For the Respondents:

Alok Singh, Bala Nath Mishra, Hausihla Prasad Mishra, Pavan Kumar Yadav, Ram Vishal Mishra, Vivekanand Yadav

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

1. Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner and Sri Vijay Shankar Prasad, learned counsel for the State-respondents and the counsel for the applicant who moved an application for impleadment. .

2. The present petition has been filed by the petitioner as a result of proceedings under the UP Imposition of Ceiling on Land Holdings Act, 1960 whereby Land treated to be the holding of the petitioner has been declared surplus under the impugned orders passed by the prescribed authority dated 19.07.1993 (Annexure 16, pg 191) and 31.03.1995 (Annexure 13, pg 128) as well as the impugned appellate order dated 14.10.2003 (Annexure 15, pg 172).

3. The challenge raised is broadly on the ground that the impugned orders overlook the impact of the earlier judgments of the High Court dated 07.11.1969 (Annexure 1, pg 40) and

21.08.1997 (Annexure 14, pg 166) as well as relevant and material evidence which proves the fact of a substantial area of the land having been transferred much prior to the cut-off date of 24.01.1971 that were bonafide transactions as well as the orders passed by the Revenue / Consolidation Authorities evidencing and confirming the transactions which establish that the ceiling authorities have erroneously proceeded to issue notices that were invalid and had also been held as such in the Judgement of the High Court dated 07.11.1969. The Impugned Orders have therefore been questioned contending that they are in teeth of the Judgment and orders that have intervened as well as suffer from perversity on account of non-consideration of relevant material evidence or ignoring the impact thereof. Other submissions oral and written have also been raised that shall be dealt with in detail hereinafter.

4. At the very outset, learned counsel for the Petitioner argued that one of the issues relating to the transfer of a substantial area of land by the Original Tenure Holder through registered sale deed for consideration had taken place in 1961 or even before that and the first ceiling notice that was issued to the tenure holder 21.08.1962 (Annexure SA-1, pg 12) did not include the land which had already been sold and transferred was all prior to the issuance of the ceiling notice.

5. Objections to the said notice had also been filed by the tenure holder and in between some rank outsider gave an application before the prescribed authority on 17.11.1962 informing the prescribed authority to also include the land that had been transferred by the original tenure holder who was the petitioner's late father. The Prescribed authority entertained the said application and called upon the Naib Tehsildar to prepare a fresh notice that was served on the Original Tenure Holder and which included the land which has been transferred.

6. This amended / revised Notice pursuant to the Order of Prescribed Authority dated 4.10.1963 were both challenged by the Original Tenure Holder in Civil Writ Petition No. 4772/1963 wherein further proceedings were initially stayed and the writ petition was ultimately allowed on 07.11.1969 (Annexure 1, pg 40) by the High Court.

7. Learned counsel for the petitioner argued that a perusal of the said judgement would leave no room for doubt that the issuance of the Notice by the Prescribed Authority impugned in the writ petition was without jurisdiction as it had been initiated at the instance of a person who had no locus in the matter. The High Court further called upon the State to explain by filing a supplementary counter affidavit as to the nature of the land as to whether it was a grove or not on the relevant date. The State failed to file any counter affidavit to that effect as desired but the affidavit which was brought on record on behalf of the State was disbelieved as it was based on personal knowledge. It was accordingly held that the revenue records reflected the correct position and therefore, the notice initially issued to the Original Tenure Holder where the said lands had not been included, was correctly prepared.

8. It was argued that under the original ceiling act of 1960 under section 6(1), grove land was totally exempt and could not be subjected to inclusion for ceiling purposes in the holding of a Tenure Holder. The judgment dated 7.11.69 therefore,

acknowledged the revenue records to that effect and to that extent it was held that prescribed authority had no jurisdiction to issue a fresh notice on the basis of alleged revised statement. The order of the prescribed authority dated 04.10.1963 initiating the fresh notice was held to be without jurisdiction and was accordingly quashed and directions were issued to dispose of the objections filed by the Original Tenure Holder on the basis of the original CLH Form 3.

9. It was next argued that the fresh notice seems to have been issued on 12-11-1974 and further notices had been issued in the name of one Rani Jagdiswari Kunwari who had died more than two decades ago. The notices relating to the land that was proposed surplus in the holding of Rani Jagdiswari Kunwari was not served on the Original Tenure Holder Bisheshwar Pratap Sahi and his two brothers Khagendra Pratap Sahi and Novendra Pratap Sahi and without affording any opportunity of hearing an order was passed by the prescribed authority on 13.03.1975, 25.03.1975 and 29.03.1975. All three orders of the prescribed authority were challenged in appeal before the Ld. Second Additional District Judge in Ceiling Appeal No. 478, 479 and 480 of 1975. Appeal No. 478/1975 was allowed on 09.07.1979 (Annexure 2, pg 48) holding that notice could not have been sent to a dead person and without affording any opportunity to Original Tenure Holder, the matter could not have proceeded and accordingly all the orders were set aside remanding the matter back for recalculating the share of each of the brothers in the said holding. The other two appeals being Appeal Nos. 479 and 480/1975 were allowed in terms of Appeal No. 478/1975.

10. Mr. Singh counsel for the Petitioner has drawn the attention of this Court to the effect that consolidation process had set commenced under the U.P. Consolidation of Land Holdings Act, 1960 and a large number of objections by third parties were filed in respect of the holdings of village Pipra by Individuals claiming that the revenue entries reflected their title and possession over the respective plots as against the recorded tenure holders in possession who were the transferees of the Petitioner's late father, the Original Tenure Holder. As noted above the transfers had been made in favour of the purchasers between 1959 and 1961 However, in all these proceedings objections had been filed in relation to some of the land in Village Pipra that stood recorded in the name of the Original Tenure Holder, the Petitioner's late father and his two brothers as well as over the holdings that stood recorded in the name of the transferees of the original tenure holder. Accordingly, the Original Tenure Holder namely the Petitioner's late father was arrayed as a Party and all the objections filed by those third parties were consolidated and heard by the Consolidation Officer exercising jurisdiction under section 9(a)(2) under UP CH Act, 1953. The aforesaid decision of the Consolidation Officer deciding the objections on 09.02.1983 (Annexure 8, pg 80) was filed before the prescribed authority and has also been filed in this Petition as evidence. The decision disposed of the objections in relation to the entire land of village Pipra transferred between 1959 and 1961 by the Original Tenure Holder and was contested before the Consolidation Officer. The claim of the objectors was rejected on the ground that they had relied on extracts of revenue records which were fake and forged and further the entries in the relevant khataunis

beginning from 1359 Fasli had been tampered and interpolated.

11. While dealing with the evidence and the facts relating to the revenue entries in the recorded tenure holders it was also noted that the Tenure Holders alleged that the land had been sold by the erstwhile proprietors. The references to the orders passed by Revenue Authorities by the Objectors were found to be fake and their endorsement were held to be forged thereby maintaining the entries in favour of the recorded tenure holders which included the transferees from the Petitioner's late Father between 1959 and 1961.

12. During the proceedings, it was recorded by the Consolidation Officer that the Naib Tehsildar (Ceiling) had also filed a response in these proceedings and then findings were recorded evidencing the fact of the quashing of the notice by the High Court through its Judgment dated 07.11.1969 (Annexure 1, pg 40). The Consolidation Officer therefore, also relied on this evidence and reaffirmed the evidence regarding the transfer of the land between 1959 and 1961 through registered sale deeds.

13. To further support its conclusion the Consolidation officer also referred to the photocopies of the sale-deeds that had been filed on behalf of the recorded Tenure Holders that were also verified by the Consolidation Officer and which was further corroborated by the record of rights the certified copies whereof were filed on record and are described in the Land Record Manual as Register Malikan (Annexure SA-2,3,4,5, pg. 22, 24, 26, 28). The relevant khasra of possession was the same as that had been produced before the Celling Authorities and before the High Court in W.P. No. 4772 of 1963 decided on 7.11.69, and therefore its veracity and probative value was confirmed by the consolidation officer.

14. It was also held that the recorded Tenure Holders who were the transferees had participated in the proceedings and were represented and evidence was filed on their behalf and accordingly all the objections filed by the strangers to the land on the basis of fake entries were rejected.

15. It was submitted that the order of the consolidation officer has attained finality as the same had been upheld by the Settlement Officer in appeal vide judgement and order dated 20.06.1989, as stated in paragraph 36 of the writ petition, and was therefore, a valid piece of evidence reckoning and acknowledging the past transactions of transfers of the land in village Pipra that stood confirmed by the corroborative evidence of the revenue entries as well as its culmination in the decision of the High Court dated 07.11.1969.

16. Meanwhile, the Original Tenure Holder, namely, Bisheshwar Pratap Sahi, father of the Petitioner, who had been contesting all the proceedings before died on 09.04.1989.

17. It was then pointed out that a fresh notice had been prepared in the name of the Original Tenure Holder and a fresh CLH Form 3 was also prepared in his name on 23.06.1986. The said notice was never served on the Petitioner's late father and on the basis of an unsubstantiated report of service by the process server, the prescribed authority passed an exparte order on 2.05.1990 (Annexure 3, pg. 52). It was argued that this order simply in three

pages proceeds to to declare land surplus without referring to any of these proceedings and orders referred to above. The order was without any notice to the Original Tenure Holder or to his heirs after his death in 1989. There is no proof of service recorded in the order dated 02.05.1990. The order incorrectly recorded that in spite of substitution, and dispatch and service of notice the heirs had not responded and consequently, it was presumed that they had no objections to the notice that was the basis of the proceedings. The said assumptions were wrong and against the facts and consequently the petitioner moved an application on 1990 to set aside the ex-parte order.

18. It has been stated by the petitioner that initially an order of status quo was passed on 27.03.1991 and applications had been moved by the Petitioner pointing out that the proceedings were concluded without complying with the earlier orders and also the objections taken regarding the separation that had taken place between the family members of the Original Tenure Holder but none of these applications were considered Requests were made through applications for continuing the status quo but all these applications were rejected on 14.02.1992 and a direction was issued for enforcement of the exparte order dated 02.05.1990 (Annexure 3, pg 52).

19. Aggrieved against the same the Petitioner filed an Appeal before the Ld. Commissioner, which was allowed on 17.04.1993 (Annexure 4, pg 66) holding that there had been no service of notice by the Prescribed Authority on the Petitioner or the legal heirs and accordingly the exparte order dated 02.05.1990 and order dated 14.02.1992 were set aside. While allowing the appeal the appellate authority categorically directed for issuance of separate notices to the appellants and the others and to give full opportunity to them to file objections and lead evidence. The plea of separation between the family members had been noted by the Appellate Authority while issuing the direction and, therefore, the said objections could not be ignored.

20. The right of the family members to file their objections even if their names-were not entered in the revenue records is further countenanced by the full bench of this Court in ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Ors. reported in 1969 RD202,*** wherein in paragraph 38, it has been specifically held that, the fact that even if a tenure holder is not recorded as such in the revenue records it will not be relevant for determining whether he is entitled to file an objection to the statement prepared under Section 10(1) of the Act and issued to another person under Section 10(2) of the Act and the above fact will not disentitle him to file an objection if he is otherwise entitled to do so.

21. It has been mentioned that the notices to the transferees are stated to have been sent earlier in 1991 and 1992 that were returned without service and apparently because they were sent to all the transferees on the same address of the Petitioner's late father at Allahabad. It is contended that this service itself was ridiculous and a mere formality and it is for the said reason that order was passed on 17.04.1993 (Annexure 4, pg 66) setting aside orders dated 02.05.1990 and 14.02.1992 by the Appellate Authority directing service of notice afresh on the petitioner and all others.

22. It is argued that the said order dated 17.04.1993 has not complied with and without referring to the same, the Prescribed Authority in haste proceeded to institute an altogether new ceiling proceedings against the petitioner being Ceiling Case No.45 and the surprising aspect of the matter is that the land which was made the subject matter of the said ceiling case was the same land which the Prescribed Authority had earlier included vide order dated 4.10.1963 to be surplus that was quashed as being without jurisdiction vide judgement and order dated 7.11.1969. In the newly instituted Ceiling Case no.45 the Prescribed Authority in haste, recording the despatch of the previous notices, without issuing any fresh notice, passed an order on 19th July 1993 (Annexure 16. pg 191), which is impugned herein whereby 146.06 acres of land of Village Pipra was declared surplus by assuming that the transferees appear to be benami Tenure Holders. The prescribed authority approved CLH Form 3 as sent by the sub divisional officer to be correct. The order has been passed in undue haste and in clear violation of the principles of natural justice completely overlooking all the objections that had been taken as well as the evidence on record including the order of the High Court dated 07.11.1969 and the evidence corroborating the transfers of the land of village Pipra as discussed in detail in the order of the Consolidation Officer dated 09.02.1983.

23. The order does not refer to any law and as would be evident from the submissions narrated hereinafter and the relevant decisions on the issues relied on by the counsel for the petitioner.

24. The Petitioner filed a recall application contending that the ceiling cases could not be proceeded separately as the original proceedings being proceedings in Celling Case No. 48/18 against the Petitioner's late Father pursuant to the notice dated 21.08.1962 had not been finalised. No order was passed on this recall application as a result whereof an appeal being Appeal. No. 102/53/323/70/D-1993 (Annexure SA-13, pg 63) was filed challenging the said order 19.07.1993 and a stay order was passed on 30.08.1993 (Annexure 9. pg 117) which is to the following effect-

"Heard the learned counsel for the appellant.

D.G.C.R. appeared for State. Let the execution of the P.A. be stayed till further orders. Subject to confirmation by P.O. issue notice. Fix early date. Call for the records. Sd/-

Additional Commissioner (J)

GKP 30.08.1993."

25. During the pendency of the Appeal the petitioner had also moved other applications on 17.02.1995, 28.02.1995 (Annexure 11. pg 121) and 24.03.1995 (Annexure 12, pg 124) before the Prescribed Authority where the recall application was pending, again requesting the Prescribed Authority to consolidate the cases together and proceed with the matter after notice to all the tenure holders and after verifying the correct statement under CLH Form 3. The applications dated 17.02.1995 and 28.02.1995 were rejected by the Prescribed Authority on 28.02.1995 (Annexure 10, pg 119) and application dated 24.03.1995 was rejected on 31.03.1995 (Annexure 13, pg 127) by the Prescribed Authority who disposed off all other objections by rejecting them.

26. Three appeals were filed by the Petitioner. Appeal No. 34/P-1995 against the order dated 28.02.1995 in reference to the applications dated 17.02 1995 and 28.02.1995. Appeal No. 113/31/49/P-1995 was filed against the order dated 24.03.1995 that were interlocutory orders referred to hereinabove and Appeal No. 103/48/70/N-1995 (Annexure SA-16, pg 97) was filed against the order dated 31.03.1995. These appeals alongwith appeal No. 102/53/323/70/D-1993 that was filed in 1993 against the order of Prescribed Authority dated 19.07.1993 and were pending were consolidated and heard together and was finally disposed of on 7.11.1996 (Annexure SA-15, pg 80).

28. This order of the appellate authority came to be challenged in Writ Petition No. 36434 of 1996 before the High Court which was ultimately allowed vide judgment dated 21.08.1997 (Annexure 14, pg 166) setting aside the order of the Commissioner in appeal and remanding the matter for fresh consideration alongwith the observations made therein. Consequently, the Appeals were restored and were directed to be decided once again by the Appellate Authority, categorically holding that reasonable opportunity had not been given to the petitioner who was seriously prejudiced because of his independent right which he was claiming as a share-holder and it was further observed that the transactions of the sale-deeds that have been effected prior to the relevant date could not be treated as a sham transaction in as much as the burden had been wrongly placed on the Petitioner and it was for the State to have established the same by leading cogent evidence.

29. Learned counsel for the petitioner argued that the Appellate Authority once again has proceeded to decide the appeal vide impugned order dated 14-10-2003 (Annexure 15, Pg. 172) recording the findings that the petitioner is not entitled to any separate share as claimed by him on the basis of his date of birth and further the transfers made in 1961 were in teeth of the 1960 Act that had restrained the transfer from 20.08.1959 onwards. This order it is urged was passed without going through the original records that have been summoned by the Commissioner himself vide letter dated 22-24.07.03 (Annexure 17, pg 196). The matter was heard in the absence of original records and was decided accordingly without perusal of the original record which contained the evidence on which reliance has been placed.

30. It is submitted that the impugned orders suffer from procedural irregularities, non-consideration of the relevant material rendering them perverse and not in conformity with the legal provisions and the law, the principles whereof have been ignored and incorrect findings have been recorded which are inconsistent with the weight of evidence on record.

31. It was vehemently urged that the impact of the first judgment of the High Court dated 07.11.1969 holding that the revised statement had proceeded on an incorrect basis and that the original CLH Form 3 could not have been revised has been completely ignored. The second finding recorded in the Judgment dated 7.11.69 upholding the contention of the Petitioner that the revenue records indicated that the land to be grove has been completely omitted to be considered in all the impugned orders. This omission is vital and seriously prejudicial in as much as the State had been called upon to respond to

the said allegation but its failure to do so by simply swearing an affidavit on personal knowledge was categorically rejected and recorded and the conclusion therefore drawn was that the notice at the initial stage in CLH Form 3 had been correctly prepared. The High Court held that the prescribed authority had no jurisdiction to issue a fresh notice. It is, therefore, evident that the Judgment dated 7.11.69 was binding on clear issues of fact relating to the nature of the land and holding the action of the Prescribed Authority to be without jurisdiction in issuing a fresh notice and including the land of village Pipra.

32. It is contended that as per the Ceiling Act as then existed, under section 6(1) grove was totally exempt and in this background there was no legal bar for the transfer of the land that was sold by the Tenure Holder and the registered sale-deeds were executed between 1959 and 1961. The acceptance of the contention of the Ld. Addl. DGC (Revenue) that the transfers have been restricted after 20.08.1959, has, therefore, no substance as the said contention was accepted ignoring the aforesaid aspect of the case and the binding impact of the Judgement dated 7.11.69 that has attained finality.

33. The findings that have been recorded in treating the transfers to be benami, the Appellate Authority has overlooked the fact that a benami transacted property held by a person is one in respect whereof consideration has been provided by some other person as held by the Hon'ble Supreme Court in ***Smt. Shaifali Gupta Vs. Smt. Vidyadevi Gupta and others in SLP (C) No. 4673 of 2023*** in paragraph 26, where it has been specifically defined as to what would constitute a benami transaction. To prove the same, no evidence has been led to that effect except an allegation that in spite of registered notices having been sent the purchasers did not appear before the Prescribed Authority. This finding on notice of the transferees as contended is perverse in as much as it is evident that all the notices were dispatched to the transferees at the address of the original tenure holder i.e. the late deceased father of the Petitioner at his residence at Allahabad. It is argued that there is no material to establish nor any evidence was led by the State that the address of the transferees was in the city of Allahabad as reported by the Revenue Officials and placed on record before the Prescribed Authority. The Appellate Authority has completely ignored this aspect and has based its findings only on the strength of the order of the Prescribed Authority and without perusing the records or summoning them even though the Appellate Authority itself had sent a letter on 22 / 24.07.2003.

34. The conclusion of the Appellate Authority that there is clarity in the order of the Prescribed Authority on this aspect is absolutely misplaced and contrary to the facts and evidence on record.

35. In this regard it is argued that what is further noticeable are the findings on the evidence relating to the transactions as recorded by the Consolidation Officer in the order dated 09.02.83: The Appellate authority has held that the Order dated 9.02.83 is a decision after the cut-off date under the Ceiling Act, which is 24.01.1971 and has discarded the impact of the order as it was delivered after 24.01.71.

36. It was vehemently contested by the learned counsel for the petitioner that the Appellate Authority has ignored the fact

that the dispute raised before the Consolidation Officer were objections filed on the basis of revenue entries relating to 1359 fasli (1952) and 1367 fasli (1960). The objectors had attempted to get these revenue entries (record of rights) interpolated and manipulated and on that basis had produced revenue extracts claiming that they were in possession and therefore, the settlement record should be corrected in their favour and their objections should be allowed. petitioner's late father was also a party to the said proceedings and after contest all objections were rejected with findings relating to the evidence and the transfers that were all prior 24.01.71. The order of the Consolidation Officer, therefore, related to pre-existing facts and evidence prior to 1971. The evidence and the facts relating to the transfer were crystallised in the Judgment of the Consolidation Officer that became final after having entertained the affidavit of Naib Tehsildar (Ceiling) and noticing the judgment of the High Court dated 7.11.69. Consequently, neither the judgment of the High Court dated 7.11.69 could be ignored nor the entire evidence corroborating the status of the transferees, supported by the revenue records and the entire material that was discussed by the Consolidation Officer could have been ignored. Non consideration of this vital evidence which are all related to the period prior to 24.01.71 was prejudicial to the petitioner. Therefore, merely because the Consolidation Officer had decided the issues in 1983 the same did not in any way dissolve or dilute the pre-existing evidence or even the judgement of the High Court dated 7.11.69. By omitting to consider the same the Appellate Authority as well as the Prescribed Authority in the impugned orders have arrived at conclusions which are perverse for non-consideration of relevant material available on record. A Judicial review of such orders on the ground of perversity is clearly permissible in view of the full bench decision of the this court in the case of Nanha vs. DDC (1975 AWC Pg. 1).

37. The submission of the State that the judgement of the Consolidation Officer cannot be looked into is further not acceptable in view of the fact that the judgement of the Consolidation Officer does not loses its evidentiary value as has been held by this Court in the case of ***Jhandoo Vs. State of U.P. and others reported in 1977 (3) ALR 418*** specifically in paragraphs 9 & 11.

38. This Hon'ble Court has gone on to interpret Section 38-B as added by U.P Amending Act No. 20 of 1976 in Uma Shanker Vs. State of U.P. and others reported in 1980 AWC 487 ALL, wherein the division has held in paragraphs 10, 11 & 13, that has been relied on by the learned counsel and is quoted herein below:

10. Hence Section 38-B does not obliterate all decisions or findings given by courts of law either under the general law or under the Consolidation Act from being given effect to in ceiling proceedings. Section 38-B makes the provisions of the Ceiling Act to have an overriding effect and so the findings which are in conflict or at variance with the provisions of the Ceiling Act will not bar retrial of the involved issues in proceedings under the Ceiling Act. But otherwise the decisions are to be recognized even in proceedings under the Ceiling Act. To this effect is the decision of Gopi Nath, J. in Ramlal v state of Uttar Pradesh MANU/UP/0636/1978 1978 AWC 713. In that case, the question was

whether after the coming into force of the Amending Act No.2 of 1975 and Act No.20 of 1976 a re-determination of ceiling area of a tenure holder has to follow as a matter of course in respect of cases decided by the Ceiling Authorities or is it confined to cases affected by amendments incorporated in those Amending Acts. It was held that a fresh notice for re-determination of surplus land was to issue not in all cases but only in such of them as were likely to be affected by amendments.

Section 9 of the Act No.2 of 1975 provided:

Where an order determining the surplus land in relation to a tenure holder has been made under the Principal Act, before the commencement of this Act, the Prescribed Authority may at any time within a period of two years from the commencement of this Act, re-determine the surplus land in accordance with the Principal Act as amended by this Act.

11. The learned Judge rightly pointed out that the re-determination was to be done in so far as it was required for the amendments introduced by the Amending Act of 1975.

13. The learned Judge observed that re-determination was required only when it was necessitated by the amendments made in the Principal Act, notwithstanding the existence of a decision determining the surplus land either by the Prescribed Authority or in appeal the learned judge concluded that the general review of the earlier orders was not intended by the aforesaid provisions permitting re-determination. Only such cases are liable to be reopened which required re-determination in view of the amendments incorporated in the Principal Act. Section 38-B was to be interpreted in the light of these provisions of the Amendment Act by which Section 9 of the Act 2 of 1972 was introduced in the Ceiling Act. Section 38-B facilitated the re-determination directed to be done by Section 9 of Act No.2 of 1975 and Section 31 of Act No.20 of 1976, by specifically providing that the findings or decisions given before October 10, 1975 shall not debar the retrial of the issues governed by the Act as amended."

39. It is argued that the aforesaid law laid down by this Court has again been followed in paragraphs 4 & 5 in the case of ***Kr. Shiv Mahendra Singh Vs. State of U.P. and others reported in 1982 ALL.L.J. 106.***

40. It has been further argued that in the facts of the instant case the State has failed to point out as to whether any findings or decisions of any authorities or a court of law as has been relied upon by the petitioner including the findings of fact recorded in the order of the Consolidation Officer dated 9.2.1983 are contrary to any of the amendments made in the Principal Act which would warrant a retrial of the same, therefore as per the law laid down by this Court in ***Ram Lal Vs. State of U.P. and others reported in 1978 AWC 713 ALL*** in paragraphs 19, 20 & 21, the ceiling authorities were not justified in ignoring the decisions rendered by competent courts or authorities in respect of matters which were not affected by the changes made in the Principal Act.

41. It is further pointed out that the State has not denied nor has it controverted the findings returned in the order of the

Consolidation Officer or the order itself, therefore the law laid down by the Division Bench of this Court in ***Rajendra Prasad Vs. State of U.P. and others reported in 1978 AWC 657 ALL*** in paragraph 10 would also squarely cover the case of the petitioner in as much as the revenue entries made under Section 49 of U.P. Consolidation of Holdings Act would be final as the consolidation order has remained unrebutted in the petitioner's case.

42. Apart from the above, as has been argued earlier and has been reiterated that as is evident from the order of the Consolidation Officer dated 9.2.1983 itself. the Naib Tehsildar Ceiling had also participated in the consolidation proceedings, therefore the celling authorities were unjustified in ignoring the findings of fact returned in the order of the Consolidation Officer that too without providing any reason on the basis of any material evidence available on record that the said findings were in any way contrary to the amendments made in the ceiling law or were perverse.

43. There is yet another legal aspect that has been urged which directly answers the issues raised particularly regarding the cut-off date of 24.01.1971 and any transfers made prior to the said date. Reference was made to the Judgment of the Apex Court in the case of ***Ram Adhar Singh vs. Prescribed Authority and Ors. 1994 (Supp.) (3) SCC Pg. 702.***

44. In spite of this judicial pronouncement and the binding effect thereof learned counsel submits that the Appellate Authority as well as the Prescribed Authority have manifestly breached the same and have recorded findings contrary to law by attempting to enter into the status of the sale-deed that have been executed long before the cut-off date of 24.01.71.

45. It has been then urged that a perusal of the orders impugned it becomes clear that instead of disproving the veracity of the sale deeds the State has tried to shift its burden upon the petitioner requiring him to prove the same. The said action on the part of the ceiling authorities is contrary to the mandate of this Court in ***Mukhtar Singh Vs. The 2nd Additional District Judge Bulandshahar*** and others reported in 1982 ALL.L.J. 1453 wherein this Court in paragraph 8 has specifically held that a sale deed must prevail according to its apparent tenor and the burden of proving that the ostensible is not the actual state of affairs is on the person who alleges that proposition. Even otherwise as urged earlier the petitioner has proved the veracity of the sale deeds on the basis of unrebutted facts including the revenue records and findings of facts returned in the order of Consolidation Officer dated 9.2.1983. The copies of the Register Malikaan have been pointed out that have been filed alongwith the supplementary affidavit.

46. The aforesaid mandate further finds support from paragraph 10 of an earlier decision of this Court in ***Vishwa Nath Singh Vs. State of U.P. and others reported in 1978 ALL.L.J. 1085.***

47. The categorical findings of the High Court in its order dated 7.11.69 have been clearly pleaded in paragraphs 10 and 11 of the Writ Petition.

48. The Counter Affidavit filed on behalf of the State in paragraphs 9 and 10 does not rebut the same.

49. It is therefore contended that there is no question raised by the State about the legality of the order dated 7.11. 69, that has

been become final. The State, therefore, is clearly bound by the said judgment and these aspects seem to have been neither construed in accordance with law nor their legal impact has is no question raised by the State about been assessed that renders the impugned orders invalid deserving to be quashed.

50. It has been argued that the proceedings were conducted in violation of principles of natural justice in the manner in which the revised notices were prepared and reissued that have been done without verifying the correct status of the holding of the Petitioner or the Original Tenure Holder and as a matter of fact the State in its anxiety to somehow the other declare land surplus has thrown over-board all procedures as held in the Judgment dated 7.11.69 and then subsequently by the Appellate Authority in the previous round of proceedings in the order dated 17.04.93. Not only this in spite of the remand of the matter by the High Court once again vide Judgment dated 21.08.97, the Appellate Authority has completely omitted to consider that the burden lay on the State to prove the transfer transactions to be benami. This discharge of burden by the State was attempted only by explaining of service of notice and the absence of response by the transferees without indicating as to how the transfers were benami. The sending of notices has already been indicated above to be a farcical exercise as it was dispatched to the residential address of the Original Tenure Holder in Allahabad City. This was therefore, not sufficient to discharge the burden of proving a benami transaction for which no evidence was led. To the contrary, the Petitioner had furnished all the material regarding the revenue records and the entries made therein, the fact of the transfer made and other related documents discussed above, on record as well as through the Judgment of the High Court dated 7.11.69 and the order of the Consolidation Officer dated 9.02.1983. The contention of the State therefore, was fully rebutted by leading evidence by the Petitioner which could not be dislodged by the State by leading any evidence to the contrary. The presumptive value of the said evidence including judgement of the High Court and that of the Consolidation Officer remained unrebutted. In the said background there was no reason much less a good reason for the Appellate and the Prescribed Authority to have decided the matter which has been done in a perfunctory manner and accordingly they deserve to be quashed.

51. It is then argued that the petitioner had set up a separate claim with regard to an additional share on the ground that he was born prior to the abolition of zamindari and therefore, a separate unit to the extent provided under the Act should be earmarked in his favour. This argument has also been noticed by the High Court in its judgement 21.08.97 regarding the share of a person born before the abolition of zamindari in land which was sir or khudkast. This Court has further held in ***Vishwa Nath Singh Vs. State of U.P. and others (supra)*** in paragraph 12. that a son born before 1.7 1952 has a right and a share in sir and khudkast plots and it is not relevant whether his name was entered in the revenue records of the disputed plot or not or whether he was in actual possession over his share in the plots or not.

52. Furthermore it is urged that the findings in the impugned order is also contrary to the judgement and order dated 9.7.1979 passed by the 2nd Additional

District Judge, wherein it was held that the holding of Smt. Jagdishwari Kunwari would be included in the holdings of her heirs qua their respective shares, who were the petitioner's late father i.e. the original tenure holder as well as the petitioner's two uncles namely Late Khagendra Pratap Sahi and Novendra Pratap Sahi and it is the same holding which has devolved upon the petitioner, therefore there can be no doubt or dispute regarding the land to be ancestral sir and khudkast. Even otherwise relevant pleadings regarding the same have been made in paragraphs 37 & 39 of the writ petition which has been dealt with in paragraph 25 of the counter affidavit, wherein there is no specific denial regarding the same nor has the State produced any evidence or material available on record to rebut the said averments.

53. There was no evidence on record regarding the petitioner having passed graduation or having a post graduate degree. The Appellate Authority concluded that the petitioner ought to have submitted his high school certificate and having not done so a presumption was drawn that he was not bom before the abolition of zamindari. The date of birth of the Petitioner was proved by evidence to be January 17, 1951, which is prior to the date of vesting of zamindari, i.e., 01.07.1952. The State had not adduced any evidence and yet assumptions were drawn by the Appellate Authorities. This has been specifically challenged in the paragraph 37 of the Writ Petition. The same has been denied in paragraph 25 but without any proof or evidence to confirm the finding recorded by the Appellate Authorities. On the other hand, the Petitioner had filed evidence supported by the Affidavit of one Mr. Adya Prasad Dubey and the affidavit of his late mother Smt. Manorama Devi supporting that the date of birth of the petitioner was 17.1.1951. Even though, the Appellate Authority has in the operative part of the order indicated that this claim can be made by the Petitioner before the prescribed authority but has recorded contrary findings presuming the educational qualification of the petitioner as graduate and master of arts that too without there being any basis. The Petitioner's assertion in para 37 has been met with a bald denial by the state in the counter affidavit. On the other hand, the affidavit of the mother of the petitioner has not been disbelieved nor can it be discarded inasmuch as a mother's evidence is the best piece of evidence. The affidavit of the mother dated 28.08.2003 has also been filed but the Appellate Authority has only mentioned the affidavit of Mr. Adya Prasad Dubey. The Appellate Authority has, therefore, ignored the affidavit of the mother. It is relevant to point out that the averment about the affidavit having been filed of the mother dated 28.08.2003 has been categorically stated on oath in para 36 of the writ petition which has been replied to in the counter affidavit by the State in para 24 wherein there is no denial to the same.

54. The Hon'ble Supreme Court in its judgement between State of ***Chattisgarh Vs. Lekh Ram reported in (2006) 5 SCC 736*** has emphasized upon the importance of the corroboratory evidence of the statement of a mother. The petitioner has made categorical averments in paragraph 36 of the writ petition regarding the documents and material evidences filed by him to prove his date of birth which has not been rebutted by the State in paragraph 28 of the counter affidavit on the basis of any material evidence available on record and a

mere bald denial has been made in the said paragraph by the State. The ceiling authorities while passing the impugned orders have also been unable to dislodge the veracity and validity of the Voter I.D. submitted by the petitioner before them, therefore in the absence of the same the findings regarding the date of birth of the petitioner returned in the impugned order are of no consequence.

55. Even, the filing of the affidavit of the mother and Mr. Adya Prasad Dubey which was filed on 15.09.2003, has not been rebutted in the counter affidavit. The petitioner in his memo of appeal had clearly raised an issue of the separate share of the family members under a family settlement dated 17.08.1969 whereby the Petitioner's brother and his sister and mother were in possession of the plots allotted to them in the said family settlement. This Issue has been completely ignored even though it has been taken as ground no. 14 & 15 of the memo of appeal that has been filed alongwith with the supplementary affidavit on record. Thus, these issues have also been either considered erroneously or have been omitted to be considered as such the impugned orders are invalid. Furthermore, this fact has been asserted in para 51 of the writ petition to which there is a bald denial in para 31 and there is no other denial in any of the other paragraphs of the counter affidavit. All the facts have once again been reiterated by the Petitioner in his rejoinder coupled with the supplementary Affidavits filed on record.

56. It may be reiterated that the Appellate Authority as noted above in the operative part has observed that in the event the Petitioner provides an affidavit that he has no other land he may be extended the benefit of 2 hectares of land over and above 18.04 acres of the land admissible under the Act. Once the operative part admits the entitlement of additional 2 hectares to the Petitioner over and above the ceiling limit then the findings recorded in the main order becomes inconsistent and for this reason also the impugned orders deserve to be set aside.

57. As pointed out above the impugned appellate order dated 14.10.2003 admits the entitlement of additional two hectares to the petitioner over and above the celing limit, however the appellate authority has not extended the same benefit of Section 5(3)(a) of the Act to the other family members of the petitioner. The pleadings in that regard have been taken in paragraph 38 of the writ petition which has again been met with a bald denial by the State in paragraph 25 of the counter affidavit which shows that in absence of any categorical and specific denial of the same the ceiling authorities were bound to consider the said plea of the petitioner.

58. In view of the above discussion and in the absence of any specific denial by the state in its counter affidavit on the basis of any cogent evidence it becomes amply clear that the plea of the petitioner regarding his date of birth to be 17-01-1951 and his entitlement of an independent and individual share is liable to be accepted.

59. It has also been pointed out that similar proceedings had been initiated by the Authorities displaying flagrant violation of procedure and ignoring material evidence in the case of the brother of the Original Tenure Holder late Khagendra Pratap Sahi, who during the same period had suffered from the same faulty process

and it refers to the same orders passed in 1975 as in the present case. In that petition the order of the Prescribed Authority and the order in appeal dated 19.07.93 and 27.03.1997 respectively had been challenged. The High Court allowed the writ petition no. 12723 of 1997 vide order dated 27.02.2013 (Annexure SA-1, Pg. 10) and came down heavily on the State commenting that the impugned orders have been passed in a manner which deserves to be deprecated strongly.

60. From the facts discussed hereinabove yet another glaring fact comes to light that the impugned orders passed by the ceiling authorities is nothing but sheer arbitrariness in as much as undisputedly the initial ceiling case initiated against the petitioner and against the original tenure holder i.e. his late father was Ceiling Case no. 48/18 and again in between 1990 to 1993 another Ceiling Case was instituted against the petitioner which was Ceiling Case No. 45. It is no more res integra that two separate ceiling cases against the same tenure holder cannot be proceeded with by the ceiling authorities. The continuance of two separate ceiling cases being Ceiling Case No. 48/18 and Ceiling Case No.45 are also admitted to the State which is also evident from the orders impugned.

61. As noted above under identical and almost similar circumstances and by a similar order dated 19.7.1993 a fresh ceiling case was instituted against the petitioner's late uncle namely Khagendra Pratap Sahi, who was also a co-tenure holder and the said order was challenged by him in Writ-C No. 12723 of 1997, the judgement whereof has been recorded herein above. This court in its judgement dated 27.2.2013 depreciated the action of the ceiling. authorities and altogether quashed the new proceedings initiated against the petitioner's late uncle Khagendra Pratap Sahi. In the instant case also the fresh ceiling case being Ceiling Case No. 45 could not have been instituted nor could it have continued against the petitioner in view of the aforesaid judgement as well as the fact that the land which was the subject matter of Ceiling Case No.45 had earlier also been included in the ceiling notice by holding it to be surplus by the Prescribed Authority vide order dated 4.10.1963 which was held to be without jurisdiction vide judgement and order dated 7.11.1969 in Writ Petition No. 4772 of 1963. Thus the new ceiling case being Ceiling Case No.45 was against the directions issued in the judgement dated 7.11.1969 as well as contrary to the settled principles of law.

62. The aforesaid fact was specifically pleaded in paragraph 3 of the memo of appeal against the order dated 19.7.1993 and in paragraphs 34 & 35 of the memo of appeal against the order dated 31.3.1995 which are part of the record as Annexures SA-13 and SA-16 to the supplementary affidavit, however the impugned orders have failed to record any cogent reasoning to dislodge the same.

63. A similar attempt has been made by the Prescribed Authority as well as by the Appellate Authority while passing the impugned orders whereby they have illegally included the land of one Krishna Murti Singh in the holdings of the petitioner and his late father while determining the land of the petitioner and his late father to be surplus. The authorities while passing the impugned orders have failed to take into consideration the import and the impact of the Judgement and order passed by the Additional Commissioner

(Administration) dated 13-10-1995 (Annexure SA-14, Pg 70) in ceiling appeals no. 34/46/P-1995 and 52/71/P-1995 between Krishna Murti Singh and the State of U.P. wherein it was categorically held that plot nos. 12,13,15,17,18 and 20 pertaining to village Tandwa does not belong to petitioner's late father or his uncle Novendra Pratap Sahi and a further direction was issued by the appellate authority to exclude the said land from land declared as surplus of the petitioner's late father and uncle. Therefore, on this count also the impugned orders are liable to be quashed.

64. It is, therefore, evident that the authorities of the State have proceeded in a manner which is not only unjust but is also illegal and the proceedings deserves to be quashed.

65. The submission of the petitioner that abadi land has also been included in the notice under Section 10(2) of the Act by showing it to be irrigated land and furthermore that there were constructions and houses standing thereon of different persons even prior to the Act which were liable to be exempted under Section 6-F of the Act has been categorically made in paragraph 50 of the writ petition which has again been met with a vague and a bald denial by the State paragraph 31 of its counter affidavit, therefore it is evident that ceiling authorities have either altogether ignored the said submissions or they have not considered the said pleas of the petitioner in accordance with Section 6 of the Act, therefore the said plea of the petitioner has to be decided afresh by taking into consideration the exemptions provided under Section 6 of the Act.

66. Arguments have been advanced with regard to the status of possession pending the proceedings before the prescribed authority after the appeal was allowed on 17.04.93 setting aside the order dated 02.05.1990 After the appeal had been allowed and the matter had been remanded, orders with regard to stay had also been passed after the Prescribed Authority had decided the matter on 19.07.93. An interim stay was granted on 30.08.93 and in between the prescribed authority had passed orders that have been referred to hereinabove as such in order to protect the possession of the land writ petition No. 15960/1995 was filed which was disposed of with observations on 07.06.1995. A photocopy of the certified copy of the order has been annexed alongwith the written submissions filed by the petitioner.

67. It has been pointed out that the matter was being contested by the Petitioner and prior to the passing of the impugned appellate order dated 14.10.2003, the previous appellate order had been quashed by the High Court on 21.08.97 It is relevant to notice that when the said writ petition 36434/1996 was filed, an interim order was passed on 14.11.1996, which is quoted hereinbelow:-

"The notice on behalf of respondents have been accepted by Ld. Standing Counsel. He prays for and is granted one month time to file counter affidavit. Rejoinder Affidavit may be filed within two weeks thereafter. List for admission on 28.01.1997.

The Petitioner shall not be evicted from the land in dispute and the land shall not be allotted to any one provided the petitioner deposits a sum of Rs.25,000/- with Respondent No. 4 within 3 weeks from today. The amount so deposited shall be subject to the decision of the Writ Petition.

Sd/-(Sudhir Narain) 14.11.96"

68. Thus, there were interim orders which were operating and even after the passing of the impugned Appellate Order challenged in the present writ petition an interim order was passed on 22 10.2003, which is quoted hereinbelow:-

"Issue Notice.

Until further orders of the court, dispossession of the petitioner from the land in dispute shall remain. stayed.

Sd/-(R.P. Misra. J.)

Dt:22.10.2003"

69. In view of the aforesaid facts it is urged that the petitioner as well as the transferees were in actual and physical possession of the plots in view of the various interim orders passed by the authorities as well as by the High Court.

70. Responding to the aforesaid submissions, the learned standing counsel has argued that the proceedings initiated and the orders passed are in accordance with law and consequently after having considered the entire material on record the Appellate Authority has in compliance of the judgment dated 21.08.1997 proceeded to determine the issues in accordance with law and therefore the findings recorded on all the issues do not suffer from any factual or legal infirmity. The learned standing counsel invited the attention of the court to the contents of the counter affidavit and has urged that the contentions advanced on behalf of the petitioner have no merit and the WP deserves to be dismissed. He has supported the findings recorded by the Prescribed Authority as well as the Appellate Authority contending that the previous judgment and orders in the proceedings have no binding effect and are no impediments for a decision on the basis of the notices issued to the Tenure Holder and to the petitioner and consequently the contention raised are untenable in the eyes of law.

71. Learned counsel for the allottees have asserted their rights claiming possession and as is evident from the impleadment application they claim allotment pursuant to the order dated 19.07.93 passed by the Prescribed authority. They have thus only asserted rights of possession on the strength of the facts stated in the impleadment application regarding consequential allotments on the strength of the impugned order of the Prescribed authority dated 19.07.93. The allottees have not contested the present petition on it's merit and have fairly accepted that they only have any right in case the State suceeds.

72. Heard the learned Counsel for the petitioner, learned Standing Counsel for the State as well as all the learned Counsel who have appeared for the subsequent allottees.

73. Having heard learned Counsel for the parties and having perused the records as well as the relevant documents, the pleadings including the counter affidavit of the State and the supplementary affidavits filed on behalf of the Petitioner, the challenge raised in the present proceedings has its genesis in the proceedings that were initiated against the original tenure holder under the 1960 Act. The first notice that was issued on 21.08.1962 is on record as Annexure 1 to the supplementary affidavit. The said notice did not include the land which stood sold and transferred up to

1961. These transfers had been made by the original tenure holder through registered sale deeds and the names of all transferees were accordingly recorded and the revenue records were maintained as per the same. Objections to the said notice had been filed by the tenure holder but in between some rank outsider moved an application for including the said land which has been transferred relating to village Pipra, Tehsil Padrauna then District Deoria (now Kushinagar) and the prescribed authority issued directions for preparation of a fresh notice under his order dated 04.10.1963. This fresh notice was prepared in CLH form 3 of the Ceiling act 1960 which was challenged by the tenure holder contending that the land which had already been sold and transferred through registered sale deeds could not be included in the notice and therefore the notice was bad and without jurisdiction. This gave rise to Writ Petition No.4772 of 1963 filed by the tenure holder (Petitioner's late father) where an interim order was passed and then the Writ Petition was finally allowed after exchange of affidavits on 07.11.1969. The impact of the said order has a direct bearing on the contentions raised and it is therefore essential to reproduce the same and is quoted hereinbelow:-

"The petitioner has come up to this court against this order which is Annexure-6 to the writ petition. It has been contended before me by the learned counsel for the petitioner that the Prescribed Authority had no jurisdiction to allow the fresh notice to be issued with a revised statement to the petitioner. It has been stated by the learned counsel that the Naib Tehsildar Ceiling prayed that a fresh copy of the revised statement in Form CLH 3 be sent along with the notice to the petitioner to show cause why the revised statements be not taken as correct. According to the learned counsel Form CLH 3 is form prescribed under rule 7 of the rules framed under the Act 7 runs thus:

Soon after the issue of general notice in CLH Form 1, the Prescribed Authority shall, after making necessary inquiries, cause to be prepared a statement in C.L.H Form 3.

In proposing the ceiling area applicable to a tenure holder in Part C of CLH Form 3, the Prescribed Authority shall have regard to the following:

As far as possible, land carrying a superior class of soil or tenure or being under cultivation or specialized valuable crops, such as pan, Keora, Bela, Chamela or Gulab, etc. should be included in the proposed ceiling area.As far as possible sub-division of holdings should be avoided by including in the first instance share of the tenure holder in joint holdings in the proposed ceiling area applicable to the tenure holder.

The ceiling area proposed to be given to the tenure holder should be as compact as possible.

Under Sub-section (2) of Section 10 of the Act, this form prepared under sub-section (1) is to be sent along with the notice in CLH Form 4. According to the learned counsel there is no provision for having the statement prepared under sub-section (1) of Section 10 in CLH Form 3 after the objection had already been filed and on failure of the tenure-holder to dispute the correctness of the statement the statement can be treated as final and on that basis ceiling area applicable to the tenure holder and the surplus land shall be

determined. Where the statement prepared is in dispute the Prescribed Authority shall determine the surplus land of the tenure holder. From a reading of Annexure-5 it appears that the Naib Tehsildar took objection that the land specified in the application has wrongly been shown as grove or to have been sold before 20th August 1959, and has been shown as exempted land in the statement. According to the Naib Tehsildar the land should have been included in the tenure holder's land holding and should have been accounted for at the time of determining the surplus area as it was neither a grove on the spot nor was sold on or before 20th August, 1959. According to the learned counsel the statement prepared in CLH Form 3 is based on the revenue records prepared by the revenue department and it was not possible for Prescribed Authority to revise such a statement and issue a revised notice and call for the petitioner to the file objection against the same. To me it appears that the objection taken in this writ petition on behalf of the petitioner is well founded. If a statement has been prepared on the basis of revenue records that statement should be taken to be correct. During the hearing of this writ petition I directed the learned Standing Counsel, appearing for the State, to file a supplementary counter affidavit to show on basis of the revenue record whether the land said to be grove was or was not a grove on the 1st day of May 1959. No supplementary counter affidavit has been filed on the basis of record. Of course supplementary counter affidavit has been filed, but that has been filed on personal knowledge of the person swearing the affidavit. It means that the revenue record speaks things otherwise than contained in the supplementary counter affidavit. The statements, therefore, appear to have been correctly prepared at the initial stage in CLH Form 3 and the Prescribed Authority in my opinion had no jurisdiction to issue a fresh notice on the basis of the alleged revised statement. The order dated 4th October, 1963 based on the application of the Naib Tehsidar Ceiling and that of Gauri Shanker Sahi who has no lacus standi to put in appearance in these proceedings is an order passed without jurisdiction and there is an apparent mistake in passing such an order passed by the Prescribed Authority. In my opinion the order should be quashed:

I allow the writ petition, quash the order dated 4.10.1963, passed by the Prescribed Authority, Padrauna, and direct that the objections filed by the petitioner on the statement prepared in CLH Form 3 be disposed of according to law. I make no order as to costs.

Sd/-C.D. Parekh

Dated: November 7, 1969"

74. A perusal of the said judgment of the High Court clearly indicates that it investigated the contention regarding the nature of the land that was claimed by the Petitioner to have been recorded as grove and recorded as such in the relevant revenue record khasra that was relied on by the Petitioner.

75. As contended by the tenure holder, the land under the said Act which was reflected as a grove in the revenue was exempt and therefore the ceiling statement was examined to which the Naib Tehsildar had taken an objection that it was wrongly shown as a grove and therefore it should have been included in the tenure holder's land. The State therefore was justifying the

issuance of the second revised notice contending that the land was not a grove on the spot nor had it been sold prior to 20.08.1959. The tenure holder took a stand that the original CLH form 3 was based on revenue records and the prescribed authority could not have revised the same on the basis of some personal knowledge about the nature of the land. The land therefore could have been transferred and was bonafidely transferred. As is evident from a perusal of the judgment the challenge /objection taken by the tenure holder was held to be well founded and it was categorically recorded that if the statement had been prepared on the basis of revenue records then it has to be taken as correct. However, the High Court in order to satisfy itself seems to have issued a direction to the State Counsel to file a supplementary counter affidavit explaining the status of the land as to whether it was grove or not on the first day of May 1959. The supplementary affidavit was not filed on the basis of any revenue record and to the contrary an affidavit was filed based on personal knowledge. The High Court therefore took exception to the same and categorically held that the revenue records reflected otherwise than the supplementary counter affidavit filed by the State, and then went on to hold that the ceiling statement prepared at the initial stage in CLH form 3, which was obviously issued on 21.08.1962, had been correctly prepared and the prescribed authority had no jurisdiction to issue a fresh notice which was the notice under challenge dated 04.10.1963 that was held to be without jurisdiction. Accordingly, the initiation of issuance of a fresh notice on 04.10.1963 was held to be without jurisdiction on the basis of the aforesaid findings and the Writ Petition was allowed and the order and notice dated 04.10.1963 was quashed. Directions were issued that the objections filed by the tenure holder/Petitioner on the basis of the original statement prepared in CLH form 3 be disposed of according to law.

76. The said judgment of the High Court became final that has been categorically averred with a copy of the judgment filed on record as Annexure 1 to this Writ Petition with a reference to the same in paragraph 10 with recitals in paragraph 11 of the Writ Petition. The counter affidavit in the present writ Petition filed by the State states in paragraph 9 and 10 as follows:

"9. That the contents of paragraph no. 10 and 11 of the writ petition are related to the order dated 07.11.1969 passed by the Hon'ble High Court in writ petition No. 4772 of 1963 Sri Vishshwar Pratap Shahi Vs. State of U.P. and others, hence need no comments.

10. That the contents of paragraph no. 12, 13 and 14 of the writ petition need no comments."

77. A combined reading of the said paragraphs leaves no room for doubt that the judgment of the High Court dated 07.11.1969 has been admitted in the counter affidavit as a matter of record and needed no comments. In my considered opinion, the finality of the said judgment not having been disputed, the correctness thereof and the findings recorded therein are clearly binding on the State. The ceiling authorities and its officials therefore being bound by that finding and the judgment of the High Court could not have proceeded contrary to the same or to take any steps for any reassessment for initiating any proceedings of the land as the notice

04.10.1963 itself had been quashed by the High Court after recording findings as indicated above.

78. At this juncture it is appropriate to refer to the status of the transfers. Even otherwise the amended provisions of the Ceiling Act came up for consideration before the Apex Court in the case of Ramdhar Singh Vs. Prescribed Authorities & Ors 1994 Supp 3 SCC 702. In that case, the challenge raised was to a transfer made on 22.04.1969 through a registered sale deed by the tenure holder in favour of his son. The said land was sought to be included in the holding and the sale deed dated 22.04.1969 was put to test wherein the ceiling authorities took the view that the sale deed was not genuine for want of consideration as it was a transaction between father and the son. The Apex Court went on to hold that the ceiling authorities could not have made any enquiry into the sale deeds executed prior to 24.01.1971. The relevant portion of the said judgment reversing the judgment of the High Court and the ceiling authorities is quoted hereinbelow:

"The existence of the sale deed being not disputed and it having taken place, as said before, on February 24, 1969, prior to the appointed day that is January 24, 1971, the inquiry regarding the validity of the sale deed under sub-section (6) of Section 5 was totally misplaced. Thereunder, as it appears to us, the appropriate authority had no jurisdiction to be put the validity of the sale deed to test since his jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. Not only the first and the appellate authority under the Act persisted in that view, but the High Court too proceeded on that basis. The effort of the appellant to have it declared that the authorities had no jurisdiction to invalidate the sale under sub-section (6) of Section 5 when read with Explanation II to sub-section (1) of Section 5 also was a futile attempt because the High Court followed the path, as did the authorities under the Act, and rejected the writ petition. We are of the view that this was a wholly erroneous approach. Sub-section (6) of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and if that is so any finding of theirs as to the contents of the sale is of no assistance. In the result the appeal must succeed. Accordingly, allowing the same we set aside all the orders of the authorities below as also that of the High Court. No costs."

79. A perusal of the same would indicate that such an action was held to be erroneous as the authorities were held to have no jurisdiction to determine the validity of the sale and the appeal was accordingly allowed.

80. This needs to be emphasised that the issuance of the revised notice in the present case was quashed by the High Court which had included the land that had been transferred through sale deeds as indicated above including the land that was transferred in Village Pipra. It is, therefore, evident that there was no determination of any surplus land in the present case by the Authorities prior to 24.01.1971 as the revised notice had been quashed by the High Court on 7.11.69. The Ceiling Act came to be amended with the introduction of new provisions and under the amended act the cut-off date was 24.01.1971 as a result whereof transfers before this cut-off date were held to be beyond scrutiny in the case of **Ramadhar Singh (supra)**.

Consequently, the land which stood transferred by the Tenure Holder prior to the said date could not have been included in any fresh notice.

81. Thus, neither the Prescribed Authority could have issued any fresh notice in respect of the said land as per the binding effect of the High Court judgment nor otherwise any examination of the facts relating to the sale deeds executed prior to 24.01.1971 could have been undertaken by them after the amending act came into force and fresh proceedings were initiated giving rise to the present proceedings.

82. Thus, the land that stood transferred prior to 24.01.1971 could not be made the basis for any fresh notice in any manner whatsoever.

83. There is yet another valid reason for the same which is the evidence relating to the said facts of the transfers and the status of the land confirming the holding to be of the transferees that was thoroughly examined in the settlement proceedings of the U.P. Consolidation of Land Holdings Act 1954 as recorded in the order of the consolidation officer dated 09.02.1983. The said fact has been brought on record and the contentions in this regard have been raised in detail Indicating that some land of the original tenure holder and the land which had already been transferred under the sale deeds was made subject matter of a large number of objections filed by third parties on the basis of fake and manipulated revenue entries and fake orders of revenue authorities. These objections were filed in respect of the same land against the tenure holder (the Petitioner's father herein) as well as against his transferees about whom reference has been made hereinabove. The said objections were contested and during the contest the Naib Tehsildar Ceiling was also made to participate along with the revenue records to verify the correctness and the status of the revenue entries relating to the land in Pipra. The Consolidation officer who tried all the objections in terms of the UP CH Act 1954 recorded findings relating to the same pre-existing facts of transfer effected prior to 24.01.1971 and the revenue records indicating the title of the transferees and confirmed the same. A perusal of the findings recorded therein are, therefore, an evidence relating to the facts and status of the land that stood transferred and recorded prior to 24.01.1971, and the said order dated 09.02.1983 that was passed with the participation of the Naib Tehsildar Ceiling and also taking notice of the judgment of the High Court dated 07.11.1969, became final. Some of the objectors had also preferred an appeal against the said order but the same were dismissed and this fact has also been noticed in the orders passed by the Appellate Authority. The evidence to this effect was filed before the Appellate Authority being the order of the Settlement Officer Consolidation Padrauna dated 20.06.1989. This has been stated in paragraph 36 of the writ petition to which there is no denial on facts in paragraph 24 of the counter affidavit. Thus, the order of the Consolidation Officer is a documentary evidence in relation to the facts as indicated above pertaining to the transfers prior to 24.01.1971.

84. The High Court in the case of ***Jhandoo Vs. State of UP & Ors. 1977 AWC 318-1977 (3) ALR 418*** while considering the impact of Section 38-B as brought by way of an Amendment in 1976 in the Ceiling Act examined this issue in the context of reduction in land during Consolidation proceedings under the UP

CH Act 1954 and its impact on ceiling proceedings. The question posed by the High Court in paragraph 5 is as follows:

"5. The answer to the problem raised in the petition shall depend on the question whether order passed by the Consolidation Courts is final regarding the area held by the Petitioner. And the date for determination of ceiling area is 8-6-1973 or the date when the objection is decided."

85. The State took a stand that the finality of any orders passed in terms of Section 38-6 of the Ceiling Act is taken away and therefore the order passed in consolidation proceedings after coming into force of the said provisions will have no binding effect as a combined reading of Section 31 read with Section 38-B lift the bar of the conclusiveness of any judgment. The issue was discussed in detail by the High Court and the finding recorded and the conclusion drawn is quoted hereinbelow:-

"6. The learned Standing Counsel has relied on Section 38B of the Act, added by Act 20 of 1976 and has urged that finality of any order passed by any Court except the ceiling Court has been taken away. And, therefore, the order passed in consolidation proceedings did not have the force of res judicata. He maintains that a combined reading of Section 31 and its various sub-clauses read with Section 38-B leaves no room for doubt that Section 31 permits reopening of all matters decided earlier, by ceiling authorities and Section 38B lifts the bar of conclusiveness of any judgment, finding or issue given by any Court, tribunal or authority.

7. Sri Verma on the other hand severely criticised the enactment of this section. According to him, the Legislature instead of accepting the interpretation put by the Supreme Court in Agricultural and Industrial Syndicate Ltd. v. State of U.P. MANU/SC/0350/1973: AIR 1974 SC 1920 came out in its usual haste, with an amendment which, if the interpretation of Standing Counsel is accepted, creates a situation of uncertainty and chaos. He argued that such legislations do not only obscure the objective for which the Act was enacted but also bring untold misery and hardship to the agriculturist class who are all the time living on a state of uncertainty. According to him these retrospective enactments are against the spirit of the Act and are responsible for huge arrears in law Courts and denial of justice.

8. Sri Yudhishthir has however, rightly pointed out that these are matters of policy with which this Court is not concerned.

Section 388 of the Act reads as follows.

No finding or decision given before the commencement of this section in any proceedings or on any issue (including any order, decree or judgment) by any Court, tribunal or authority in respect of any matter governed by this Act, shall bar retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended, from time to time.

9. If the interpretation, as suggested by the Standing Counsel is accepted it may create anomaly. The present case demonstrates it in full measure. The total area held by the Petitioner on 8-6-1973, the date after

which a tenure holder cannot hold any land in excess of ceiling area, was more than the celling area fixed by the Act. But as a result of the findings recorded by the consolidation Courts the area has been reduced to such an extent that nothing remains to be declared as surplus land. The finding recorded by the Consolidation Courts is binding on the Petitioner. He cannot agitate or challenge in any competent civil or revenue court and urge that the area which has been reduced as a result of consolidation is incorrect and the original area should be restored to him. The effect of Section 38B on the one hand shall to be destroy the finality of an order passed under the Consolidation of Holdings Act for purposes of determination of ceiling area yet the order remains binding on the Petitioner under Section 49 of the Consolidation of Holdings Act. Such an anomaly could not have been intended by the Legislature. The argument, therefore, that any finding of issue recorded by any Court can be reopened does not appear to be sound. As pointed out in Civil Misc. Writ No. 734 of 1977 decided on 18-5-1977, it is the finding recorded in a ceiling case decided before October, 1975 that shall not operate as res-judicata."

86. A perusal of the said judgment would demonstrate that finality of proceedings were judged on a comparison of the provisions of Section 38-B and the binding effect of the orders of the consolidation courts under Section 49 of the Consolidation of Holdings Act 1954. The argument of the State that the finding of issue recorded by any court can be reopened, was rejected.

87. In the present case, the findings recorded by the Consolidation Officer is in relation to those facts of the transfer and status of revenue records that related to the period prior to 24.01.1971. The transfer of land by the tenure holder prior to 24.01.1971 stood reduced from his holdings and was not therefore rightly included in the original ceiling notice dated 21.08.1962. Consequently, the order of Consolidation authority could not have been ignored to the extent of discarding its evidentiary value. It remains an order by a competent authority with regard to the facts of transfer prior to 24.01.1971. It has to be remembered that the Consolidation Officer did not create any new rights of the tenure holder or the transferees under the order dated 09.02.1983 but held that all objections to the holdings on the basis of fake and manipulated documents deserved to be rejected, and accepted the evidence of transfer through sale deeds and revenue entries in favour of the tenure holder as well as the transferees to be correct.

88. Apart from this, the order of the Consolidation Officer did not record any finding contrary to the provisions of the amended Ceiling Act for the purpose of the reopening of the case under Section 38-B. It only acknowledged and confirmed the status of revenue records as well the transfers already affected and maintained the settlements of the tenure holder and the transfers.

89. The High Court in the judgment of **Jhandoo Vs. State of U.P. & Ors**. in paragraph 11 categorically held that the proceedings under The Consolidation of Holdings Act, even if by virtue of Section 38-B do not operate as res judicata, yet it does not lose its evidentiary value. Learned counsel for the petitioner has also relied on Paragraphs 19, 20 and 21 of the decisions in the case of ***Ramlal Vs. State of UP 1978 AWC 713*** and Paragraph 10 of ***Rajendra***

Prasad Vs. State of UP & Ors. 1978 AWC 657.

90. Having held as above, proceeding further, there are yet other intervening facts which need to be noticed. Fresh notices were issue in 1974 on 12.11.1974 to the tenure holder (father of the petitioner). Another notice emanated in the name of the deceased predecessor in interest of the tenure holder late Rani Jagdishwari Kunwari, who had died more than two decades ago proposing some more land as surplus. These notices related to the land where the two brothers of the tenure holder had also an interest relating to their respective shares. The said notice was against a dead person and the prescribed authority proceeded to pass three orders on 13.03.1975, 25.03.1975 and 29.03.1975 which were all *ex-parte* and without notice to the heirs of the aforesaid deceased tenure holder. All these three orders were challenged by the petitioner's father and his two brothers in Ceiling Appeal No.478, 479 and 480 of 1975 before the learned Second Additional District Judge. All the three appeals were allowed on 09.07.1979 holding that the notice had been issued in the name of a dead person and the proceedings have been finalised without affording any opportunity to the existing tenure holders. A copy of the judgment by the learned Second Additional District Judge in Appeal No. 478/1975 against the order dated 13.03.1975 has been filed on record where it was held that the proceedings could not have been undertaken against a dead person and without affording opportunity to the Appellant and his brothers. The same judgment was followed in Appeal Nos. 479 and 480 challenging the orders of the prescribed authority dated 25.03.1975 and 29.03.1975 and the appeals were accordingly, allowed. This fact has been categorically stated in paragraph 14 of the writ petition that has been replied to in paragraph 10 of the counter affidavit of the State that it needs no comments. Paragraph 10 of the counter affidavit is quoted hereinbelow:

"10. That the contents of paragraph no. 12, 13 and 14 of the writ petition need no comments"

91. The aforesaid fact therefore stands confirmed that the ceiling authorities in addition to the earlier notices had adopted a fresh notice for instituting a fresh case that was also set aside and in my opinion could not have been initiated as a tenure holder has to be given a consolidated notice and separate proceedings are not contemplated under the Ceiling Act. The learned standing counsel could not explain as to how a fresh notice was issued and in this regard a similar finding was arrived at by the High Court in the case of the deceased Tenure Holder's brother in Writ Petition No. 12723/1997 decided on 27.02.2013, the judgment whereof has been brought on record through a supplement affidavit. The same issue was raised and answered by this Court in para 21 of the Judgment which is extracted hereinunder:-

"21. When this Court enquired from the learned Standing Counsel as to how a new case could have been registered in 1988-89 when the earlier matters were already pending, he could not reply at all."

92. In the present case also the proceedings arising out of Celling Case No. 48/18 was pending and a fresh case was registered being Ceiling Case No 45. No answer was forthcoming on this legal

aspect either from the learned standing counsel or even from the learned counsel for the allottees. Neither, the Prescribed Authority nor the Appellate Authority have been able to justify the registration of the fresh case and had failed to accept this contention of the petitioner that has been raised before them as has been noted hereinabove.

93. In this background and with the aforesaid facts what appears is that a fresh notice was prepared without complying with the aforesaid judgment of the learned Second Additional District Judge on 23.06.1986. The said fact has been clearly pleaded in paragraph 15 of the writ petition as follows:

"15. That the judgement of the District Judge was never complied with in its essence and the notices were not prepared accordingly and it is alleged that fresh CLH Form-3 were prepared in the name of the petitioner's late father on 23 June, 1986."

94. Even though the same in the counter affidavit is stated to be not admitted but to the contrary as appears on record, the notices were issued but without service on the tenure holder, the prescribed authority proceeded with the matter. The tenure holder (petitioner's father) died on 08.04.1989. No notice had been served on him nor is there any evidence in rebuttal to that effect.

95. Not only this, in spite of substitution of the heirs of the tenure holder, no notices were served on them. The prescribed authority presuming service of notice on the petitioner and his brother proceeded to pass a cryptic two-page order on 02.05.1990 declaring surplus land without looking to the records or the entire preceding events, judgments and orders referred to hereinabove. The petitioner, pointing out these facts and the entire background of the litigation, moved an application for recall of the said order wherein initially an order of *status quo* was passed on 27.03.1991. Applications were moved by the petitioner also for compliance of the earlier orders and also to take notice of objections regarding the separation of the family of the petitioner as well as other objections but all the applications were cursorily rejected on 14.02.1992 and instead an order was passed reaffirming the order dated 02.05.1990 and to proceed accordingly. What is noticeable is that the prescribed authority also made an attempt allegedly sending notice to the transferees of the tenure holder with regard to which facts have already been noted hereinabove. This was attempted by sending a consolidated notice to the transferees and a report of the Lekhpal dated 09.02.1991 indicates that a majority of the notices were dispatched on only one address, 11 Kariappa Road Allahabad, which was the address of the residence of the tenure holder and not the transferees. This fact has been categorically stated in paragraph 23 of the writ petition and in paragraph 16 of the counter affidavit, the state has simply narrated that these facts relate to the issuance of notice as per law to the transferees. A perusal of the said report, which has been brought on record as Annexure 5 demonstrates that this dispatch of notice was a mere formality and dispatched on almost a single address. These notices were reported to have remained unserved which was obvious because they were deliberately addressed blind-foldedly at the address of the petitioner's father. Thus, notice having been sent at the wrong address was clearly an empty formality.

96. The *ex-parte* order dated 02.05.1990 and the order dated 14.02.1992

were both challenged before the Appellate Authority. The aforesaid facts of sending notices in a haphazard manner was also challenged before the Appellate Authority. It was held that service of notice was not proved and was insufficient and accordingly both the orders dated 14.02.1992 and 02.05.1990 were set aside on 17.04.1993. This fact has been stated in paragraph 19 of the writ petition which has not been denied and it has been stated in paragraph 13 of the counter affidavit that it needs no comments. It is thus clear that the prescribed authority had proceeded *ex-parte* without notice to the heirs of the tenure holder and to any of the interested parties and therefore the orders were set aside with directions to proceed on merits.

97. The prescribed authority proceeded once again to pass a cryptic order on 19.07.1993 of two pages relying on the very same service of notice and the reports regarding service of notice in a case that was registered afresh as Ceiling Case No.45 in the name of the deceased tenure holder Mr. Visheshwar Pratap Sahi (petitioner's father) who had died on 09.04.1989. It simply in a cryptic manner records that the notices which were sent to the transferees have been returned back as postal note that there were no such persons available on the given address. As noted above, the notices had been sent to the transferees on the address of the deceased tenure holder in the ceiling proceedings no. 48/18. The same procedure seems to have been adopted once again by the prescribed authority in the newly instituted case Ceiling Case No.45 and then again the holdings of village Pipra to the tune of 146.06 acres was declared surplus. This order dated 19.07.1993 was once again *ex-parte* wrongly recording that the land was being cultivated by Mr. Visheshwar Pratap Sahi. This finding is perverse inasmuch as the tenure holder had already died on 09.04.1989 and there was no question of the land being cultivated by the deceased tenure holder. In my considered opinion, the order is cryptic and unmindful of facts as well as all the previous proceedings and their impact as discussed above again in two pages. The registration of a new ceiling case and then proceeding to declare the land surplus is an exercise contrary to law. The said order dated 19.07.1993 declares the same land as surplus of village Pipra, the notice in respect whereof had already been quashed by the High Court on 07.11.1969 as indicated above. Once, it was held that the notice in respect of the said land was without jurisdiction, and the same stood confirmed with the evidence discussed in the order of the Consolidation Officer dated 09.02.1983, the prescribed authority could not have overreached the same to pass a fresh order in respect of the same land, that too completely omitting to refer to the judgment and orders. The transfers could not be questioned in the light of the observations made hereinabove. This was a clear jurisdictional error of fact and of law by ignoring the binding effect of the previous proceedings referred to hereinabove. In my opinion, this also amounts to an exercise of authority which can be termed as malice in law. Reference be had to the judgments of the Apex Court where legal malice and malice in law have been explained as something done without lawful excuse being a deliberate act in disregard to the rights of others. The statutory exercise of power by the prescribed authority was therefore for a purpose that was alien to the facts and the law and seems to be a deliberate omission with an intent to defeat the culmination of the earlier proceedings. Reference be had to the judgment in the case of **Ravi Yashwant**

Bhoir Vs. District Collector, Raigarh & Ors. 2012 (4) SCC 407 and the decision in the case of **Sama Aruna Vs. State of Telangana 2018 (12) SCC 150.** It may also be pointed out that the notice which was issued on 12.11.1974 after the order of the High Court did not include the land of village Pipra that was transferred prior to 24.01.1971, the sale deeds whereof had been discussed by the Consolidation Officer in the order dated 09.02.1983 referred to hereinabove.

98. There is yet another legal issue which seems to have been not noticed by the prescribed authority regarding the applicability of limitation under the provisions of Section 31(2) under the amendment brought about in the amended Act of 1976 under the amended provisions of the Ceiling Act. It may be necessary to point out that amendments in the Ceiling Act were brought about through the U.P. Imposition of Ceiling on Land Holdings Amendment Act 1972 (18) of 1973, the Amendment Act 1974 (2) of 1975 and Amendment Act 1976 (20) of 1976. The 1976 Amending Act introduced Sections 31(1) to (4). This related to abatement of earlier proceedings and issuance of fresh notices. These provisions came up for consideration before the Apex Court in the case of **Arvind Kumar Vs. State of UP & Ors. 2016(9) SCC 221.** The Apex Court after discussing the legislative history of the Ceiling Act and the provisions aforesaid in that case held that the transitory provisions as contained in Section 31 prescribed a limitation The argument of the Appellant therein was resisted by the State of UP contending that the redetermination of the ceiling was permissible.

99. There is yet another issue which has been overlooked namely that the Appellate Authority in the orders passed in Appeal No.478, 479 and 480 of 1975 on 09.07.1979 had set aside the orders of the prescribed authority passed on 13.03.1975, 25.03.1975 and 29.03.1975. With regard to these proceedings, nothing seems to have been done till fresh notices were once again initiated on 23.06.1986 which is after seven years of the decision of the Appellate Authority and after 11 to 12 years of the issuance of the notices in 1974. The provisions of the amendments brought about in the Ceiling Act particularly Section 31 (2) of the UP Act No.20 of 1976 has nowhere been referred to or even noticed for which a reference can be made to the decision of the Apex Court in the case of Arvind Kumar (supra).

100. Since, the order dated 19.07.1993 passed by the prescribed authority was erroneous, a recall application was moved by the petitioner contending that with the institution of three cases through three separate notices as narrated by the petitioner was incorrect. A request was made to rehear the matter after consolidating all the proceedings. This recall application was not decided and therefore the order dated 19.07.1993 was challenged in Appeal No.102/53/323/70/D-93. The Appellate Authority passed an interim order dated 30.08.1993 which has been filed as Annexure 9 to the writ petition. Since the recall application had not been decided by the Prescribed Authority while the appeal was pending as stated above, two applications were moved on 17.02.1995 and 28.02.1995 before the Prescribed Authority requesting that service should be effected appropriately on all interested persons and secondly the revenue records should be summoned for the verification of the status of the land included in the ceiling notice of different

villages. These two applications have also been filed on record as Annexure 11 and the same came to be rejected on 28.02.1995, copy whereof is Annexure 10 to the Petition. Another application had been moved before the prescribed authority to consolidate all the proceedings and the same was also rejected on 24.03.1995.

101. The Prescribed Authority proceeded to decide Ceiling Case No.48/18, the original ceiling proceedings that had been initiated against the Petitioner's father and passed an order on 31.03.1995 once again where objections with regard to the status of the shares of the Petitioner and other issues raised by the Petitioner, declared land surplus in the hands of the Petitioner and his brother vide order dated 31.03.1995. Consequently, three more appeals were filed, two against the said rejection of the Applications by the prescribed authority as referred to above and Appeal No. 103/48/70 P-95 against the order dated 31.03.1995. All these appeals were heard simultaneously and were disposed of on 07.11.1996 upholding the declaration of surplus land by the authority in the two orders dated 19.07.1993 and 31.03.1995.

102. The petitioner aggrieved by the improper procedure and incorrect findings recorded by the prescribed authority in the orders, challenged the same in Writ Petition No.36434/1996 before the High Court and the appellate order dates 07.11.1996 was set aside on 21.08.1997 the judgment whereof has been filed as Annexure 14. The High Court once again indicated that the burden regarding the status of the sale deeds and the transfers was on the state which had not been discharged. Other issues with regard to the independent rights of the Petitioner in the holdings was also taken into account and it was ultimately found that the orders passed by the Appellate Authority arising out of the aforesaid orders of the prescribed authority were not sustainable and consequently the Writ Petition was allowed and the Appeals were restored to their original numbers for decision afresh after taking into consideration all the observations made in the said judgment.

103. The Appellate Authority was requested that since the records are voluminous and the entire pleadings and the proofs as referred to hereinabove is on the record of the prescribed authority, therefore the same may be summoned. The Appellate Authority on 22.07.2003 passed an order for summoning of the records which order has been filed as Annexure 17 to the Petition. The aforesaid fact has been stated in paragraph 46 and 47 of the writ Petition which have not been clearly denied and it has been stated in paragraph 31 of the counter affidavit that suitable reply has been given in the preceding paragraphs whereas no such reply to the same is found in the counter affidavit. Not only this, the denial in paragraph 31 is that the orders have been passed in accordance with law. Thus, the fact of the records having not been summoned has not been denied factually and apparently the swearing clause of the affidavit indicates that paragraph 31 of the counter affidavit has been sworn on legal advice which is obviously not based on record. It is therefore evident that the records of the Prescribed authority do not appear to have been summoned in spite of the Appellate Authority having passed an order to that effect. Where after the impugned order has been passed on 14.10.2003 that has been assailed in the present Writ Petition along

with the orders of the prescribed authority dated 19.07.1993 and 31.03.1995

104. It may be indicated that the impugned order records the filing of two affidavits on behalf of the petitioner one of Mr. Adya Prasad Dubey dated 15.09.2003 and the affidavit of the Petitioner's Mother dated 28.08.2003 as additional evidence which stands recorded in the impugned order. These two affidavits relate to the date of birth of the petitioner stated to be 17.01.1951. While recording findings only one of the affidavits of Adya Prasad Dubey have been referred to and seems to have been cast aside as it was filed during hearing. The contents of the affidavit of the mother of the petitioner that has been totally ignored. The Appellate authority seems to have been carried away by an indication in the family register about the educational qualification of the petitioner being a post-graduate which is alleged as patently incorrect and was vehemently contested which has also been asserted in the paragraph 37 of the Writ Petition. There is a bald denial in the counter affidavit but no proof has been filed to establish that the Petitioner was a post graduate. Once the affidavit of the mother had been filed, the same was of evidentiary value and could not have been ignored. The evidence of the parents particularly the mother was therefore a valid piece of evidence to assert the date of birth as such the impugned order stands vitiated for non-consideration of relevant material in spite of the fact that the said affidavit was admittedly on record. The supplementary affidavit filed by the petitioner is supported by an Aadhar Card of the petitioner that mentions his date of birth as 17.01.1951 which again supports his contention and removes any doubt regarding the same

105. The ceiling authorities in the impugned orders have returned a finding that the petitioner has not been able to demonstrate that the independent share of land being claimed by the petitioner is sir and khudkast land. The said finding is again contrary to the mandate of the judgements cited herein above in as much as the State cannot shift its burden upon the petitioner to prove his case in as much as the burden was upon the State to prove that the land being claimed by the petitioner was not sir or khudkast for which no findings have been returned in the impugned orders nor any averments regarding the same have been made in the counter affidavit.

106. The Appellate Authority then while proceeding to consider the issue with regard to the transfers came to the conclusion that the transfers were suspicious and appeared to be Benami as it was not possible to have many purchasers in the same year of 1961. He has further recorded that the mutation of the sale deeds had not taken place in 1961 and therefore they had not been mentioned in the earlier notice. This finding also appears to be perverse inasmuch as mutations do not confer title. The transfers were through registered sale deeds and as is evident from the order of the consolidation officer dated 09.02.1983 the execution of the said sale deeds was verified by the consolidation officer and was compared with Register Mallikaan, the extracts whereof had already been filed and have also been filed along with the supplementary affidavit dt. 23.10.2003 in the present proceedings

107. The finding further is that if the said mutations were recorded in 1962 then too also the said sale deeds being after 20.08 1959 were invalid and were Benami. This conclusion is also perverse inasmuch as the first notice was issued on 21.08 1962

and not in 1961. Secondly, the judgment of the High Court dated 07.11.1969 and its impact has been completely overlooked by the Appellate Authority. Thirdly, the legal position as explained by the Apex Court in the case of Ramdhar Singh (Supra) as discussed hereinabove has also been completely overlooked. Thus, the invoking of the provisions of Section 38B was misplaced as neither the impact of the judgment of the High Court dated 07.11.1969 could have taken away nor the findings recorded therein and its evidentiary value could have been ignored. Similarly, the conclusion drawn by the Appellate Authority that the order of the Consolidation officer dated 09.02.1963 was after the appointed day of 24.01.1971 is a misconceived conclusion in view of the discussions hereinabove and the law indicated inasmuch as the said order had only acknowledged the pre-existing rights of the transferees that were transfers through registered sale deeds prior to 24.01.1971 with the revenue records confirming the recording of such transfers. Needless, to repeat as already indicated above the Naib Tehsildar Ceiling had participated before the Consolidation officer and had filed a response therein. These aspects have also been completely overlooked and as noted above, the said findings recorded have on facts remained unrebutted in the counter affidavit of the State except for saying that the order dated 09.02.1983 was liable to be ignored. The submissions and arguments on behalf of the Petitioners as noted are therefore correct on all the issues raised rendering the proceedings and impugned orders unsustainable. Therefore in view of the finality of the judgement of this court dated 07-11-1969 along with other unrebutted and uncontroverted evidences on record, the Prescribed Authority had acted beyond jurisdiction in declaring the land of village Pipra as surplus and had illegally included the same in the holding of the original tenure holder and the petitioner by instituting the fresh Ceiling Case No. 45 by the impugned order dated 19-07-1993.

108. The Appellate Authority has further recorded the fact that the Appeals filed against the order of the consolidation officer had been dismissed on 26.06.1989 which orders are after 24.01.1971. This again is an erroneous conclusion inasmuch as the fact of dismissal of an appeal after 1971 or even the order of the Consolidation officer does not loose its evidentiary value as already held hereinabove. The order completely ignores these legal propositions and is therefore contrary to law.

109. It is also evident that another tenure holder namely Mr. Krishna Murti Singh had been proceeded against declaring this holding to be part of the holdings of the Petitioner's late father. Mr. Krishna Murti Singh had challenged the same and the Appeal was allowed by the Appellate Authority itself on 13.10.1995. This order has been brought on record in the Writ Petition and the said fact has been categorically stated in paragraph 53 which has not been denied as stated and paragraph 53 of the Writ Petition even though has not been admitted in paragraph 31 but the same has been sworn on the basis of legal advice and not on the basis of record. The order in the case of Mr. Krishna Murti Singh had categorically held that certain land of Village Tandwa did not belong to the Petitioner's father and had been wrongly included in the notice of the tenure holder. This explains the casual manner in which the ceiling notices were prepared and served on the basis of which the proceedings were initiated.

110. Apart from this, there is yet another relevant fact which has been brought forth through the supplementary affidavit which is a decision of this Court dated 27.02.2013 in ***Civil Miscellaneous Writ Petition No.12723 of 1977 (Mr. Khagendra Pratap Sahi Vs. State of UP & Ors.).*** The Judgment is a matter of record and it recites that notices had been served on the tenure holder along with his two brothers, (including the Petitioner's late father) but it was found that the lands were separately held by the three brothers and had been erroneously clubbed into one and that the notices therefore issued to the tenure holder on 12.04.1989 were erroneous and accordingly the order passed by the prescribed Authority on 19.07.1993 was illegal. It was held therein that a ceiling proceeding had been instituted afresh which was erroneous as purportedly a new case has been registered as Ceiling Case No.44 and then decided on 19.07.1993. It is the said order of the prescribed authority which was challenged in appeal and the Appellate Authority had dismissed the same on 27.03.1997. Both these orders were challenged in the said Writ Petition and were quashed while imposing costs on the state. Apparently, the order of the prescribed authority in the said case appears to be of the same date as in one of the cases in the present proceedings as is evident from the order of the High Court dated 21.08.1997.

111. The judgment dated 27.02.2013 is extracted hereinunder:-

"19. In para 27 of the writ petition that names of certain persons have been given and it is stated that notices were issued to them though those persons had nothing to do with the land in dispute. This averment in paragraph 27 of writ petition has been replied in para 21 of counter affidavit stating that the persons mentioned therein are fabricated and have got no business with the disputed land as they are outsiders.

20. I find facts of this case and the way in which ceiling authorities have proceeded, really strange, startling and shocking. The specific case of petitioner is that against the same holding, earlier fabricated proceedings were initiated, inasmuch as, a ceiling case no. 112 was initiated against a dead person. Obviously, there could not have been any occasion to serve a notice upon the dead person namely Rani Jagdishwari Kunwari. Further, without giving due opportunity to the petitioner and his two brothers, three separate ceiling proceedings were initiated and whimsical orders were passed by Prescribed Authority. The said orders were set aside in appeal vide three judgments of same date, i.e., 9th July, 1979. Despite the fact that the Prescribed Authority was directed to take up all the matters together and after serving copy of statement prepared under Section 10(2) upon the concerned tenure holders namely the petitioner and his two brothers, to pass order in accordance with law but the Prescribed Authority did not pass any order thereupon and kept the matters pending. But abruptly in 1988-89, a new case was registered i.e., ceiling case no. 44 against petitioner and after serving notice upon persons, whom respondents themselves have stated and admitted in para 21 of counter affidavit that they have nothing to do with the land in dispute, order dated 19.07.1993 was passed declaring petitioner's land as surplus. Interesting thing here is that no notice was served upon the petitioner at all. The transaction of sale took place in 1959

treated to be benami without examining the same in the light of statutory requirement under Act, 1960.

21. When this court enquired from the learned Standing Counsel as to how a new case could have been registered in 1988-89 when the earlier matters were already pending, he could not reply at all.

22. In my view, the manner in which ceiling authorities have proceeded in this case and impugned orders have been passed deserve to be deprecated very strongly. It is nothing but a sheer arbitrary show of might and power upon a helpless individual tenure holder so as to deprive him of his valuable property rights in the pretext of passing statutory orders though patently illegal. This is not according to procedure prescribed in law and beside being in the teeth of the provisions of Act, 1960, it is violative of Article 300-A of the Constitution of India.

23. The writ petition, in view of the above, deserves to be allowed with exemplary cost against erring respondent officials.

24. In view of the above discussion, the writ petition is allowed. The impugned orders dated 19.07.1993 and 27.03.1997 (Annexure 9 and 11 to the writ petition) are hereby quashed.

25. The petitioner shall be entitled to cost which I quantify to Rs.20,000/- which, at the first instance, shall be paid by the respondent no. 1, to the petitioner, but it shall be open to it to recover the same from concerned official i.e.. Prescribed Authority who has caused and forced this avoidable litigation upon petitioner, after making such inquiry as permissible in law."

112. This order only supports the contention of the Petitioner that the notices which have been time and again served and were prepared on Ceiling Forms without appropriately verifying the revenue records and the status of the land mentioned in the Notices were erroneous. Resultantly the calculations and determination was incorrect and hence the findings recorded in the impugned orders in Ceiling Case No. 48/18 and Ceiling Case No 45 are neither sustainable either in fact or in law. Accordingly, the proceedings and the impugned orders deserves to be set aside. The order further supports the contention of the petitioner that a fresh coiling case could not have been instituted against him.

113. Appellate Authority has nowhere taken into account the claims of family settlement, the separate shares claimed as well as all other issues that had been raised before the prescribed authority and were subject matter of appeal before him. The right of the family members to file their objections even if their names were not entered in the revenue records is further countenanced by the full bench of this Court in Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Ors. reported in 1969 RD202, wherein in paragraph 38, it has been specifically held that, the fact that even if a tenure holder is not recorded as such in the revenue records it will not be relevant for determining whether he is entitled to file an objection to the statement prepared under Section 10(1) of the Act and issued to another person under Section 10(2) of the Act and the above fact will not disentitle him to file an objection if he is otherwise entitled to do so.

114. The binding effect of the judgment of the High Court referred to

above including the entire evidence on record and the contentions related therefore have been summarily omitted to be considered and therefore non-consideration of the contention raised by the Petitioner also vitiates the impugned order. In addition thereto the issues relating to Abadi lands and other issues which could not have been included in terms of the exemptions provided under Section 6 have also not been discussed or considered and for that matter also the impugned order is vitiated. The Appellate Authority has also overlooked the orders passed in Appeal No.478, 479 and 480 dated 09.07.1979 and no consideration appears to have been made in accordance with the said directions as the notices do not appear to have been sent as per the respective shares as claimed by the Petitioner's father as well as his brothers.

115. The Appellate Authority has observed that the Petitioner would be entitled to an additional share of two hectares of land. The aforesaid conclusion drawn in favour of the Petitioner to that extent is therefore to be considered upon acceptance of the shares of the family members in accordance with the personal law as discussed by the High Court in the judgment dated 21.07.1997. This has not been done by the Appellate Authority even though the Ceiling Authorities were bound to act accordingly.

116. It also deserves mention that an application on behalf of the lease holders being impleadment application no.68877/2004 Somari & 7 Ors. was moved praying for being heard in this Petition contending that they had been allotted land pursuant to the declaration of surplus way back in 1996. When the hearing proceeded an impleadment application was moved on behalf of one Sanjay & 5 Ors. seeking impleadment. A similar application has been moved by one Munna Prasad & 29 Ors. on 10.09.2025 after the hearing had proceeded in the matter. All these applications have been allowed vide order dated 10.09.2025 and all the learned Counsel on their behalf have been heard even though two of the above-noted applications have been moved highly belatedly after 22 years of the filing of the Writ Petition. In the application filed by Munna Prasad & 29 Ors. It is admitted in paragraph 5 that they have not been handed possession till date. Learned Counsel for all the lease holders have advanced the same submissions that they cannot be denied possession over the allotted land as they have been granted lease by the State. Needless to mention that a land unless held to be surplus does not vest in the State and consequently no better rights can be claimed by the Allottees This legal position could not be disputed and was fairly conceded by both the learned standing counsel for the State as well as the learned Counsel for the allottees. In the present case, what appears from the facts on record is that the first order of the Prescribed authority dated 02.05.1990 was set aside on 17.04.1993 by the Appellate Authority where after once again the Prescribed authority passed orders on 19.07.1993 and in the Appeal filed by the Petitioner a stay order was passed by the Appellate Authority on 30.08.1993. The Prescribed authority passed the other order on 31.03.1995 as narrated above against which an appeal was filed and both the orders dated 19.07.1993 and 31.03.1995 were upheld on 07.11.1996 by the Appellate Authority that was set aside by the High Court on 21.08.1997. These Applicants claim to have been allotted land before 07.11.1996 on the basis of the order dated

19.07.1993 that stood merged with the order dated 07.11.1996 of the Appellate Authority that was ultimately quashed by the High Court on 21.08.1995. In between while the matter was pending in Appeal before the Appellate Authority in 1993 where an interim order had been passed on 30.08.1993 against the order dated 19.07.1993, the Petitioner had filed Writ Petition No. 15960/1995 that was disposed off on 07.06.1995. A copy of this order has been produced during the course of the arguments along with the written submissions. The same is extracted hereinunder:

"In the High Court of Judicature at Allahabad

Civil Suit

Original Jurisdiction

Allahabad the 7.6.95

Present

The Hon'ble Dr. B.S. Chauhan.... Judge

Civil Misc. Writ Petition No. 15960 of 1995

The order on the petition of Rajeshwar Pratap Sahi

... ...Petitioner

In re

Rajeshwar Pratap Sahi, son of Late Sri Visheshwar Pratap Sahi, resident of Tamkohi Raj, Tehsil Tamkohi Raj, District Padrauna

..... Petitioner

Vs

1. State of Uttar Pradesh, through the Collector, Padrauna,

2. State of Uttar Pradesh, through the Collector, Deoria 3. Additional Commissioner

Gorakhpur Division Gorakhpur. (Administration),

4. Prescribed Authority (Ceiling), Deoria

5. Sub-Divisional Magistrate, Tamkohi Raj, District Padrauna

6. Sub-Divisional Magistrate, Padrauna, District Padrauna

7. Sub-Divisional Magistrate, Kasya, district Padrauna

... ...Respondents

Heard learned counsel for the petitioner and learned Standing Counsel for the Respondents.

The Writ Petition stands allowed in terms of the Judgment dated 06.04.95 passed in Civil (Misc.) Writ Petition No. 8550/1995 with the following orders:-

Learned Counsel for the Petitioner argued that the Prescribed Authority had directed the taking over the possession in violation of section 14(1)(c) of the Act, as appeal has been preferred and is still pending. The argument has force. The petitioner cannot be deprived of the possession of land during the pendency of the appeal. There is a statutory bar for taking over of possession by Prescribed

Authority where the appeal is pending. Even if the stay application was not moved, the Prescribed Authority could not direct the taking over of the possession till the appeal is finally disposed off.

For the aforesaid reason, Respondent no. 4 is restrained from taking over the possession till the appeal is decided. The Writ Petition is allowed.

A certified copy of this order may be given to the learned counsel for the parties on payment of usual charges within 3 days.

Dt/-7.06.1995
Sd/-Dr. B.S. Chauhan, J."

117. All the allottees seeking impleadment as noted above have claimed allotment pursuant to the Order of the Prescribed Authority dated 19.07.1993 as noted in the order of this Court dated 10.09.2025 extracted hereinunder:-

"Ref:- Civil Misc. Impleadment Application No.68877 of 2004

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated 19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead Somari son of Rami, Ram Daras son of Jang Bahadur, Shankar son of Jang Bahadur, Kapil Dev son of Bhikhari, Sukhal son of Bhikhoo, Ghrbharan son of Bhikari, Banshi son of Bihari and Shubhawati wife of Amla as respondent Nos.4 to 11 in the array of the writ petition.

Ref:- Civil Misc. Intervention Application No. of 2021

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated 19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead applicants name of which mentioned in the memo of application as respondent Nos. 12 to 41 in the array of the writ petition.

Ref:- Civil Misc. Impleadment Application No. of 2025

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated

19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead applicants name of which mentioned in the memo of application as respondent Nos.42 to 47 in the array of the writ petition.

Ref Writ Petition

1. Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner and learned counsel for the respondents at length.

2. Sri G.K. Singh, learned Senior Counsel also filed written submission before this Court, the same is taken on record. Counsel for the respondents are also free to submit their written submission within ten days, if so advice.

3. Judgement reserved.

4. Interim order, granted earlier, will continue till the delivery of judgement."

118. The orders were finally passed by the Appellate Authority on 07.11.1996. The orders of allotment if any therefore, were subject to the outcome of Writ Petition No. 36434/1996 that had challenged the Appellate Order dated 07.11.1996 wherein also an interim order was passed staying any allotment as well as eviction of the petitioner which order has already been extracted hereinabove. There was an interim order in appeal on 30.08.1993 as noted above. The said order has already been referred to in the pleadings (Annexure 9) of the writ petition. The allottees claim that they were allotted land as a consequence thereof. It is for this reason that the High Court clarified the position vide judgment dated 7.06.1995 quoted hereinabove.

119. Once again as noted above, the High Court had quashed the orders on 21.08.1997 where after the impugned order was passed on 14.10.2003. This Writ Petition was entertained and interim orders were passed on 22.10.2003 which has continued during the pendency of these proceedings. In view of the aforesaid facts the possession as maintained under the said orders of the High Court cannot be disturbed. The possession of the land has to be maintained in accordance with law in the light of continuity of the interim orders and final orders as referred to above. It is further clarified that this court by allowing the impleadment applications of the allottees has not created any rights in their favour.

120. The Writ Petition with the aforesaid observations and directions and for all the reasons recorded hereinabove is accordingly allowed. The impugned orders of the Prescribed Authority dated 19.07.1993, 31.03.1995 and the impugned order passed by the Appellate Authority dated 14.10.2003 are hereby quashed and as a consequence whereof proceedings including that of Ceiling Case No. 48/18 and Ceiling Case No. 45 stand annulled.

121. The Prescribed authority therefore will have to, before proceeding

any further, comply with the findings recorded hereinabove and thereafter will proceed to carry out any determination in accordance with law in the light of what has been stated hereinabove before taking any other step.

122. It goes without saying that the petitioner as well as any other person claiming rights through the Tenure Holder or independently will have a right to exercise the choice of plots falling in their share with regard to which the Prescribed Authority shall be obliged to give an opportunity for the same as was already indicated by the Prescribed Authority itself in the order dated 28.02.1995.

123. Needless to mention that this order shall stand recorded in the proceedings and shall also be reflected in all the concerned revenue records for compliance. The Petition stands allowed in the above terms with liberty to the Prescribed Authority to proceed as directed above. No order as to costs.

(2025) 9 ILRA 520
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

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

Writ C No. 61072 of 2012

Ahmad Ali Khan ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Vinayak Mithal

Counsel for the Respondents:
Mr. Arimardan Singh Rajpoot, Mr. Shashi Prakash Singh, Mr. Chandra Prakash Yadav

ISSUE FOR CONSIDERATION

Whether the Sub-Registrar was justified in refusing registration of an agreement to sell relating to a bungalow (superstructure) on Old Grant land in Meerut Cantonment without prior permission/NOC from the Defence Estates Officer/Central Government, and whether such refusal can be challenged directly under Article 226 without exhausting the statutory appeal under Section 72 of the Indian Registration Act, 1908.

HEADNOTE

Cantonment Land Administration Rules, 1937 — Rules 2(c) & 15 — GGO No. 179 dated 12.09.1836 — Old Grant property — Agreement to sell of superstructure standing on defence land — Registration refused for want of prior permission — Superstructure cannot be treated as a separate entity from the defence land — "building site" includes the building together with open ground/courtyard adjacent thereto — attempt to register agreement to sell without prior permission is a colourable device to do indirectly what is directly prohibited — such agreement contemplates eventual transfer of possession and incidents of ownership and is impermissible without sanction of Central Government — refusal by Sub-Registrar is in strict compliance with Division Bench directions dated 28.08.2010 and State Circular dated 21.02.2011 — refusal order is appealable under Section 72 of the Registration Act, 1908 — alternative and efficacious statutory remedy available — direct writ petition not maintainable — petition dismissed.

HELD

Petitioner purchased Old Grant rights for Bungalow No.132, Meerut Cantonment vide sale deed executed by the heir of the recorded holder of occupancy rights. Petitioner entered into an agreement to sell and applied for registration of the said agreement, on which objections were raised by the Sub-Registrar citing absence of prior permission/NOC from the Defence Estate Officer. **Held:** Land of Cantonment Board cannot be sold without prior permission of the Central Government/Defence

Estate Officer as provided under Rule 15 of the Cantonment Land Administration Rules, 1937. General Order No.179 dated 12.09.1836 provides that the property of the Government cannot be sold by the grantee, but houses or other property situated thereon may be transferred subject to restrictions. Under the law, the petitioner cannot transfer any land without the prior permission of the Central Government. The superstructure in question was on defence land and cannot be treated as a separate entity. An agreement which, in substance, transfers possession, consideration and incidents of ownership without prior NOC is a colourable action, void ab initio and unenforceable. The Sub-Registrar refused registration of the agreement to sell, which is a step preceding execution of the sale deed of the house and the land attached thereto. The rejection was based on Government orders and the judgment of this Court directing that property belonging to Cantonment Board shall not be registered until prior permission is obtained from the competent authority. Further, against the refusal order, a statutory remedy is available under Section 72 of the Registration Act to file an appeal, and thereafter a suit may be instituted under Section 77. Writ petition not maintainable. (E-5)

CASE LAW CITED

Chief Executive Officer v. Surendra Kumar Vakil, (1999) 3 SCC 555;
Chitra Kumari v. Union of India, (2001) 3 SCC 208;
Shital Parshad Jain v. Union of India, AIR 1991 Del 253;
Cantonment Board, Varanasi v. State of U.P., Writ-C No.12897 of 2008, decided on 28.08.2010;
Virendra Kumar v. State of U.P., PIL No.74227 of 2010, decided on 22.12.2010.)

List of Acts

Cantonments Act, 1924; Cantonments Act,2006.
Registration Act, 1908;
Transfer of Property Act, 1882;
Indian Contract Act, 1872;
Cantonment Land Administration Rules, 1937;
General Order No.179 dated 12.09.1836;

List of Keywords

Cantonment — Old Grant — Defence land — Registration — Agreement to sell — Prior permission — Defence Estate Officer — Building site — Colourable transaction — Alternative remedy — Maintainability of writ.

CASE ARISING FROM

Order dated 26.10.2012 passed by Sub Registrar IV, Sadar, Meerut refusing registration of the agreement to sell

Appearances for Parties

Advs For Petitioner: Vinayak Mithal.
Advs For Respondents: Arimardan Singh Rajpoot, Addl. C.S.C. for State; Shashi Prakash Singh, Addl. Solicitor General of India, with Chandra Prakash Yadav for Union of India.

(Delivered by Hon'ble Praveen Kumar Giri, J.)

This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has made the following prayers :

"(a) issue writ, order of direction of in the nature of CERTIORARI calling for the records and quashing the objection raised by respondent no. 3 dated 26.10.2012 ***(Annexure-1 to the present writ petition).***

(b) issue writ, order or direction in the nature of ***MANDAMUS*** *commanding the respondent no.3 to register the instrument presented in his office by the petitioner on 26.10.2012 for registration of agreement-to-sell with respect to property described as Bungalow No.132, Survey No.56, British Calvary (B.C) Lines, Bungalow Area, Meerut Cantt."*

FACTS

2. The factual matrix of the present writ petition is delineated below :

(a) The Sub Registrar, IV, Sadar, Meerut vide order dated October 26, 2012 made objections in registering the agreement to sale entered into by the petitioner, Ahmad Ali Khan, with Sri Ajay Gupta and Smt. Parul Gupta in respect of a property known as Bungalow No.132, Survey No.56, British Calvary (B.C.) Lines, Bungalow Area, Meerut Cantt. relying upon the decision of this Court in Writ C No. 12897 of 2008 (Cantonment Board, Varanasi vs. State of U.P. and others) decided on 28.10.2010, PIL No. 74227 of 2010 (Virendra Kumar and Others vs. State of U.P. and others) decided on 22.12.2010 and the Circular issued by the government of Uttar Pradesh dated 21.02.2011. The objection/letter dated October 26, 2012 is quoted below :

"कार्यालय उप निबन्धक चतुर्थ, मेरठ

आपत्ति पर्ची

महोदय,

आप द्वारा मेरे समक्ष निबन्धन हेतु प्रस्तुत विक्रय अनुबन्ध-पत्र जोकि बंगला नम्बर 132, सर्वे नम्बर 56 ब्रिटिश कैलवरी (बी०सी०) लाईन्स, बंगला एरिया, मेरठ कैण्ट की 2994.23 वर्गमी० भूमि से सम्बन्धित है के सम्बन्ध में आपको अवगत कराया जाता है कि रिट याचिका संख्या- ***12897/2008,*** *कैण्टूनमेन्ट बोर्ड, वाराणसी बनाम, उ०प्र० सरकार व अन्य में मा०उच्च० न्यायालय, इलाहाबाद द्वारा दिनांक 28-08-2010 को पारित निर्णय आदेश व तत्पश्चात् पी०आई०एल संख्या* ***74227/2010****, विरेन्द्र कुमार व अन्य बनाम् उ०प्र० सरकार व अन्य में मा० उच्च० न्यायालय, इलाहाबाद द्वारा दिनांक 22-12-2010 को पारित आदेश के अनुक्रम में उ०प्र० शासन द्वारा जारी पत्र संख्या 523/ग्यारह-5-2011 दिनांक* ***21-02-2011*** *पर कार्यालय महानिरीक्षक, निबन्धन, उ०प्र०, इलाहाबाद के पत्र संख्या 860/विधि नियम दिनांक* ***04-03-2011*** *के निर्देशानुसार मेरठ कैण्ट में स्थित सम्पत्तियों के अन्तरण से सम्बन्धित किसी भी प्रलेख जैसे विक्रय-पत्र, दान-पत्र, पट्टा, इकरारनामा आदि का इस कार्यालय में दिनांक 03-03-2011 से निबन्धन बिना मेरठ कैण्ट बोर्ड, मेरठ / रक्षा सम्पदा अधिकारी. मेरठ कैण्ट (जैसी भी स्थिति हो) द्वारा जारी एन०ओ०सी० / अनुमति के नहीं किया जा रहा है। अतः यदि आप द्वारा प्रस्तुत प्रलेख के साथ मेरठ कैण्ट बोर्ड, मेरठ/रक्षा सम्पदा अधिकारी, मेरठ कैण्ट (यथा स्थिति) की एन०ओ०सी०/ अनुमति होगी तो प्रलेख का निबन्धन अवश्य किया जायेगा। आपने अनुमति नहीं प्रस्तुत की है इसलिये कृपया सम्बन्धित अनुमति के साथ ही प्रस्तुत करें तभी निबन्धन की कार्यवाही की जायेगी।*

sd/- dated 26.10.2012
उप निबन्धक चतुर्थ
मेरठ सदर, मेरठ"

(b) The petitioner has entered into an agreement to sale of a property belonging to the Union of India situated in Cantonment area and controlled by Cantonment Board. The petitioner itself has admitted this fact in the agreement to sale. The agreement to sale in question is being quoted below :

"विक्रय-अनुबन्ध ।

स्टाम्प शुल्क : अंकन 90,000/- रूपये।

कब्जा विक्रय पत्र की रजिस्ट्री के समय प्रदान किया जायेगा।

हम कि श्री अहमद अली खान पुत्र श्री अरशद अली खान, निवासी ग्राम कोताना, तहसील बड़ौत, जिला बागपत, वर्तमान निवासी 305, हरी लक्ष्मी लोक, ईब्ज क्रॉसिंग, मेरठ (उ०प्र०):----------प्रथम पक्ष ॥

व

श्री अजय गुप्ता पुत्र स्वर्गीय श्री आर०के० गुप्ता व श्रीमती पारूल गुप्ता धर्मपत्नी श्री अजय गुप्ता, निवासीगण ए-2, शास्त्रीनगर, मेरठ शहर :-: द्वितीय पक्ष ॥

जो कि सम्पूर्ण बंगला नम्बर 132 सर्वे नम्बर 56 ब्रिटिश कैलवरी (बी०सी०) लाईन्स, बंगला एरिया, मेरठ कैन्ट

जिसकी ओल्ड ग्रान्ट भूमि का क्षेत्रफल 2994.23 वर्ग मीटर है निम्न सीमित जो संलग्न मानचित्र में लाल रंग से दिखलाया गया है, के प्रथम पक्ष व्यक्तिगत स्वामी एवं वास्तविक अधिकारी हैं। प्रथम पक्ष ने उपरोक्त बंगले को द्वारा विक्रय-पत्र दिनांक 18.05.2006 ई० को श्री तेजपाल सिंह चतरथ व श्रीमती सुरजीत पुरी व श्रीमती कमल चढ्ढा से खरीद किया था कि जिसकी रजिस्ट्री बही नम्बर 1 जिल्द 1995 के सुफे 315/345 में नम्बर 214 पर दिनांक 11.01.2008 ई० कार्यालय उप निबन्धक चतुर्थ मेरठ हुई तथा उपरोक्त बंगला आज की तिथि तक प्रत्येक प्रकार के ऋण तथा भार आदि से उऋण एवं वैधानिक त्रुटियों तथा दोषों आदि से मुक्त तथा रहित है और प्रथम पक्ष को उसके विक्रय तथा हस्तान्तरित आदि करने के समस्त स्वामित्व एवं अधिकार प्राप्त हैं. कोई वैधानिक त्रुटि अथवा दोष प्रथम पक्ष के विक्रय अधिकारों में बाधक नहीं है। प्रथम पक्ष ने उपरोक्त बंगले को विक्रय करने का अनुबन्ध द्वितीय पक्ष से अंकन 45,00,000/- रूपये (पैंतालिस लाख रूपये) में तय कर लिया है और कुल मूल्य के मध्ये अंकन 25,00,000/- रूपये (पच्चीस लाख रूपये) अग्रिम धनराशि के रूप में प्रथम पक्ष ने द्वितीय पक्ष से निम्नप्रकार प्राप्त कर लिये हैं। अतः उभय पक्ष निम्न नियमों से बाध्य होते हैं :-

01. यह कि द्वितीय पक्ष आज की तिथि से एक वर्ष की अवधि के अन्तर्गत उपरोक्त सम्पत्ति का विक्रय पत्र प्रथम पक्ष से अपने अथवा अपने मनोनीत व्यक्ति के पक्ष में निष्पादित कराकर रजिस्ट्री करा लेंगे तथा अवशेष धनराशि विक्रय पत्र की रजिस्ट्री के समय चुकता कर देंगे और कब्जा विक्रय पत्र की रजिस्ट्री के समय प्रथम पक्ष द्वितीय पक्ष से प्राप्त कर लेंगे, कोई आपत्ति नहीं होगी।

02. यह कि इस अनुबन्ध के द्वारा बंगले का निर्माण सम्पूर्ण रूप से तथा भूमि से सम्बन्धित केवल ओल्ड ग्रान्ट अधिकारों को विक्रय करने का अनुबन्ध किया गया है. भूमि भारत सरकार की मिलकियत है इसलिए यह अनुबन्ध भूमि से सम्बन्धित नहीं है।

03. यह कि विक्रय पत्र से सम्बन्धित स्टाम्प व फीस आदि का समस्त खर्चा द्वितीय पक्ष स्वयं वहन करेंगे।

04. यह कि यदि उपरोक्त अवधि के अन्तर्गत प्रथम पक्ष विक्रय पत्र रजिस्ट्री करने में कोई आपत्ति अथवा इंकार करेंगे तब द्वितीय पक्ष को विक्रय पत्र न्यायालय के द्वारा न्यायालय के खर्चे सहित रजिस्ट्री करा लेने का अधिकार प्राप्त होगा जिसमें प्रथम पक्ष को कोई आपत्ति नहीं होगी।

05. यह कि सीलिंग की भूमि से म्बन्धित जो विवाद विचाराधीन है उनके समाप्त हो जाने के उपरांत यथा प्रकार भूमि इस अनुबन्ध के अन्तर्गत समझी जायेगी।

06. यह कि द्वितीय पक्ष के नाम परिवर्तन का प्रार्थना-पत्र रक्षा सम्पदा अधिकारी के कार्यालय में विचाराधीन है उसकी कार्यवाही प्रथम पक्ष लगातार करते रहेंगे और उस कार्यवाही को पूर्ण कराने में सहयोग करेंगे।

07. यह कि उभय पक्ष एवं उनके उत्तराधिकारी उपरोक्त विक्रय अनुबन्ध के पाबन्द रहेंगे। अतः यह विक्रय अनुबन्ध लिख दिया कि प्रमाणित हो और उचित समय पर उपयोगी हो। इति ॥

सीमायें उपरोक्त सम्पत्ति :-

पूरब : बंगला नम्बर 131.

पश्चिम : बंगला नम्बर 133.

उत्तर : सरकारी सड़क विख्यात बैरेक स्ट्रीट।

दक्षिण : बंगला नम्बर 140.

विवरण प्राप्ति अग्रिम धनराशि :-

01. अंकन 5,00,000/- रूपये (पांच लाख रूपये) प्रथम पक्ष ने द्वितीय पक्ष से द्वारा चैक संख्या 167014 दिनांक 04.10.2011 ई० मौसूमा जम्मू एण्ड काश्मीर बैंक लि० प्राप्त किये।

02. अंकन 20,00,000/- रूपये (बीस लाख रूपये) प्रथम पक्ष ने द्वितीय पक्ष से द्वारा चैक संख्या 172694 दिनांक 09.07.2012 ई० मौसूमा जम्मू एण्ड काश्मीर बैंक लि० प्राप्त किये।

तहरीर तारीख : 26.10.2012 ई० मसविदा श्री देवेंद्र कुमार गर्ग, प्रलेखक, मेरठ ।"

CONTENTIONS OF THE PETITIONER

3. Learned counsel appearing on behalf of the petitioner has made the following submissions :

a. The petitioner had purchased the old grant rights for Bungalow No.132, Survey No.56, British Calvary (B.C.) Lines, Bungalow Area, Meerut Cantt vide sale deed dated 18.05.2006 executed by Sri Tejpal Singh Chatrath, Smt. Surjeet Puri and Smt. Kamal Chaddha who were the recorded holders of occupancy right with respect to the aforesaid Bungalow. The petitioner entered into an agreement to sale with Sri Ajay Gupta and Smt. Parul Gupta on 26.10.2012 for total consideration of Rs.45.00 lacs out of which the petitioner has accepted Rs.25.00 lacs as advance payment. Petitioner had applied for registration of the said agreement to sale on which objections were raised by the Sub Registrar.

b. There is no provision in the Registration Act, 1908 enabling the Sub Registrar to deny the registration of any deed, therefore, he cannot deny registering the agreement to sale in favour of a third person by the petitioner.

c. The petitioner is in possession of the aforesaid Bungalow and as per the agreement to sale, the possession will be delivered to the vendees at the time of execution of the sale deed. As per the agreement to sale, the time period for execution of the sale deed has been fixed to be one year.

d. The agreement to sale is only with respect to the superstructure upon the land and there is no agreement to sale with respect to the land. In fact, the petitioner has admitted in the agreement to sale that the land is in the ownership of the Central Government and the agreement to sale does not include the land and as such agreement to sale has nothing to do with the land.

e. For the execution of such agreement, no prior permission of the Cantonment Board is required. However, the Sub Registrar in view of the circular dated 21.02.2011; circulated on 04.03.2011 has raised objection to the effect that the document presented cannot be registered in the absence of permission by the Defence Estate Officer of the Cantonment Board, Meerut.

f. The aforesaid circular is based upon two Division Bench orders of this Hon'ble Court which prohibit the execution of a deed relating to land. There is no prohibition with respect to the registration of an instrument relating to an agreement to transfer a superstructure. Hence, none of the documents that form the basis of the objections are applicable in the facts of the present case.

g. A contract for sale is not transfer and this is evident from the proviso to Section 54 of the Transfer of Property Act. Hence, registration of an agreement to transfer does not imply the transfer of the property or a sale. Under such circumstances, the instrument presented before the Sub Registrar does not amount to sale and as such is not barred. In fact, Rules have been framed under the Cantonment Act, 1924 that are called as Transfer of Property in Cantonment (Form of Notice and Manner of giving such Notice) Rules, 1985 which provides that only upon registration of the transfer of title that notice is required to be given to the Cantonment Board and not prior to getting the instrument registered. The registered instrument of transfer is to be provided to

the Cantonment Board along with notice of transfer. This is evident from perusal of Rule 3 as well as from perusal of Form-A provided for in the said Rules.

h. The Sub Registrar cannot refuse to register the agreement to sale inasmuch as the document becomes compulsorily registrable as contemplated under Section 17(1A) of the Registration Act, 1908 (hereinafter referred to as 'the Registration Act'), therefore, the Sub Registrar has failed in his duty to register the instrument and the objections raised by the respondent no. 3 is dehors the statutory provision contained under Section 17(1A) of the Registration Act.

i. The Sub Registrar has misread and misinterpreted the judgments and orders of this Court, which relate only to transfer of land. The case of transfer of land is clearly distinguishable from a case of transfer of super structure inasmuch as the ownership of the land stands vested in the Central Government and any transfer of land by a private person without permission or notice to the Central Government clouds the title of the Central Government and as such prior permission or notice is necessary. However, so far as transfer of superstructure is concerned ownership vests in the person to whom it was granted and the ownership of the superstructure can be transferred by a private arrangement. It is for this reason that Rules have been framed by the Cantonment to give notice of such transfer after such transfer gets affected.

j. In the present matter, it is not in dispute that on the demise of the recorded holder of occupancy rights in the year 1997, the legal heirs namely Capt. Tej Pal Singh (son), Mrs. Surjeet Puri and Mrs. Kanwal Chaddha (Daughters) had moved an application for mutation which remained pending at the end of the concerned authorities. Thereafter, when the rights came to be transferred to the petitioner pursuant to the sale deed dated 18.05.2006, the petitioner had also applied for mutation vide his letter dated 10.04.2008. It is, therefore, apparent that the onus casted upon the petitioner was duly discharged by him and nothing more remained to be done on his part. In such a situation it does not lie in the mouth of the respondents to allege that there did not exist any valid title with the petitioner to enter into an agreement to sell. Such being the situation the agreement to sell as executed by the petitioner in faovur of Mr. Ajay Gupta and Mrs. Parul Gupta is in accordance with the provision of law which holds the field and any inference to the contrary sought to be made by the Defense Estate Officer is wholly misconceived.

k. It is not the case of the petitioner that the land is being sold by him but it is only property standing upon the land which is sought to be transferred by the petitioner.

CONTENTIONS OF RESPONDENTS

4. Learned counsel appearing on behalf of the respondents has rebutted the arguments of the petitioners and made the following submissions:

a. The petitioner has not obtained the land in a legal manner as provided under the law as without prior permission of the Central Government, no property can be transferred to any person as is provided under Rule 15 of the Cantonment Land Administration Rules, 1937 (hereinafter

referred to as 'the Cantonment Rules, 1937').

b. No property can be transferred without prior permission of the authority of Cantonment Board/Central Government as per Rule 15 of the Cantonment Rules, 1937 as well as the Circular Dated 21.01.2011 issued by Government of Uttar Pradesh and the decisions of this Court.

c. The property in question admeasuring 2994.23 sq.mtrs is held on Old Grant Terms and recorded occupancy holders of the premises are Major Jaswant Singh Chatrath and Smt. Tirath Kaur, under the management of Defence Estate Officer Meerut Circle, Meerut Cantt.

d. On demise of recorded Holder of Occupancy Rights during 1997 their legal heirs, namely, Capt. Tejpal Singh (son), Mrs Surjit Puri and Mrs Kanwal Chadha (daughter) had applied for mutation in their favour but before their names could be recorded in the General Land Register maintained by Defence Estate Officer, Meerut, the said legal heirs transferred the property to Shri Ahmed Ali Khan S/o Arshad Ali Khan by virtue of sale deed registered on 18.05.2006. Hence, their request for mutation is also required to be rejected due to violation of Old Grant Terms. Through a general power of attorney, Shri. Arshad Ali Khan, Shri Ahmed Ali Khan applied for mutation of property in his name vide letter dated 16.04.2008, which is still pending and the property still stands recorded in the General Land Register, Meerut Cantt in the names of Major Jawant Singh Chatrath and Smt. Tirath Kaur. However, Shri Ahmed Ali Khan has submitted a registered admission declaration deed dated 07.10.2008 admitting title of Govt. over the land and trees standing thereon and also the term of 'Old Grant' under the General Order by the Governor General in Council, No.179 dated 12.09.1836 (hereinafter referred to as 'the GGO-179 dated 12.09.1836'). As per term of 'Old Grant', prior permission for any sale/purchase is needed.

e. The GGO-179 dated 12.09.1836 deals with grant of land in cantonments. It is provided that in every such case the property of the Government could not be sold by the grantee but houses or other property thereon situated could be transferred subject to certain restrictions. It further provided that the Government retained the power to resume the land on giving due notice and paying the value of such buildings as may have been authorized to be erected thereon.

f. Such individuals, currently in possession of the houses, are merely grantees (licensees) or lessees of land with absolutely no ownership rights on the land that continues to vest with the Government and the occupancy holders are permitted to transfer their occupancy rights or leasehold rights only of the authorized structures built by them on such Government land subject to certain terms and conditions which includes prior permission as per Clause 6 of GGO-179 dated 12.09.1836, in cases of all Old Grant Properties.

g. The Delhi High Court in **Shital Parshad Jain v. Union of India and others** reported in AIR 1991 Del 253 has held, that GGO 179 dated 12.09.1836 had statutory force and is an existing law in force.

h. The Supreme Court in **Chief Executive Officer v. Surendra Kumar Vakil** reported in 1999 (3) SCC 555, has

held that the terms of the grant are statutorily regulated under GGO-179 dated 12.09.1836. Further the Supreme Court in **Chitra Kumari v. Union of India and others** reported in (2001)3 SCC 208 has taken notice that the GGO-179 dated 12.09.1836 is still in force.

i. In a Cantonment, covered earlier under the Cantonments Act, 1924 and presently under the Cantonments Act, 2006 and for properties given on the Old Grant Terms, the rights of ownership is only of the super-structures, which, though transferred by sale deed, needs to be compulsorily recorded in the General Land Register as the Holder of Occupancy Rights in the first instance. Further, it is an admitted fact that the land within Cantonment is either leased out or held on Old Grant terms belongs to the Government of India, Ministry of Defence. As such land tenure within Cantonments is very different from what is prevalent and commonly understood in Municipal areas. The difference is explained in detail hereinafter. For convenience and to arrive at a just/fair conclusion, ALL LANDS WITHIN CANTONMENTS ARE OWNED BY THE GOVERNMENT OF INDIA, MINISTRY OF DEFENCE. Hence, when a property is purchased within a Cantonment only the superstructure can be bought and sold, the rights of occupation of land do not automatically get transferred to the purchaser of the superstructure or house property, thereon. The sale has to be permitted by the Government of India, Ministry of Defence prior to the purchase and if all legal/statutory requirements are fulfilled, as laid down in this connection, then the Government of India, Ministry of Defence recognizes the purchaser by mutating his/her name in the GLR.

j. The municipal areas where private land exists, sale/purchase of land alongwith the building is a legally tenable transaction. Thus, there the purchaser becomes owner of both land and building thereon. But not in the peculiar cases of land within a Cantonment where only the superstructure is sold and purchased. Even this purchase is qualified by the fact that Government of India, Ministry of Defence should recognize this as per procedure delineated herein before.

k. The refusal orders passed by respondent nos.2 and 3 are in accordance with law and also the order passed by this Court in writ petition No.12897/2008 followed by the order passed in writ petition (PIL) No.74227/2010.

l. As per GGO-179 dated 12.09.1836 Old Grant rights cannot be purchased/Transferred without obtaining prior approval of Government of India, Ministry of Defence. It is also stated that Shri Tejpal Singh Chatrath, Smt. Surjit Puri and Smt. Kamal Chaddha are till date not the recorded Holder of Occupancy and the Government has not yet sanctioned mutation in their favour till date.

m. This Court in its order dated 28.08.2010 has clearly stated that "we direct the Sub Registrar (Registration) not to register any document and not to execute any sale deed/lease deed", without there being no objection or permission of Defence Estates Officer. Therefore, the agreement to sell dated 26.10.2012 presented by the petitioner before the Sub Registrar IV Meerut is null and void as it is well covered under the legal terminology/nomenclature used in the said order of this Court.

n. The agreement to sell any property tantamounts to sale subsequently as per terms settled in the agreement. So, if the sale deed or the lease deed cannot be executed or registered by the Sub Register without obtaining 'no objection' or 'permission' of the Defence Estates Officer, then the agreement to sell which is a document prior to sale deed, cannot be registered without obtaining No Objection or permission of the Defence Estates Officer as per direction given by this Court. Therefore, the agreement to sell cannot be registered by the respondent No.3.

o. The superstructure in question is on defence land, and there is no material on record to demonstrate that the said construction was made after the permission of the competent authority.

p. It is submitted that the orders passed by this Court as stated in preceding paragraphs, apply to the property of the Cantonment Area even if the land is not sold. The order dated 28.8.2010 directs the Sub Registrar (Registration) not to register any document and not to execute any sale deed/lease deed of the land falling within the Cantonment Board. Usually in Cantonment Areas only superstructure is sold due to the land belonging to Ministry of Defence. But if the superstructure is sold without the 'permission' or 'no objection' of Cantonment Board then the intention of this Court will be defeated. Everybody will come with a document not selling the land on which superstructure stands, as the land is not his and rightfully he is not entitled to sell it because he has no title on it. In Cantonment Area only superstructure belongs to private persons, not the land.

q. It is submitted that if an agreement to sale is registered without permission then people will give possession of the property without getting the sale deed executed due to the want of permission and the purpose of the transfer will become effective, thus, the whole intention of the Court's order will be defeated. This Court in its order dated 28.8.2010 directed non registeration of any document without prior permission. It is also submitted that before this order the registration of sale deed/lease deed of the properties situated in Cantonment Board area took place without any permission or no objection by the Defence Estate Officer of the Cantonment Board. Any transaction of the cantonment area depends upon the contracts between the parties and only after registration any liability of the registering authority is created because in Registration Department transactions are not chargeable only documents are chargeable to stamp duty. The parties after registration apply for Mutation to the Cantonment Board.

ANALYSIS AND CONCLUSION

5. Heard learned counsel appearing on behalf of the parties and perused the material on record.

6. In this case, the petitioner wants to register an agreement to sale in respect of a building erected on the land of Cantonment Board to a third person and the same has been refused by the Sub Registrar mentioning the decisions of this Court as well as the Circular issued by the Government of Uttar Pradesh. The Sub Registrar has relied upon the decision of this Court in Writ Petition No. 12897 of 2008 (Cantonment Board, Varanasi Vs. State of UP and Others) decided on 28.8.2010. The order is being quoted below:

"By means of this petition, the petitioner has prayed for a writ of

mandamus commanding the State of U.P. through Secretary Institutional Finance, Sub Registrar (Registration) and the Collector Varanasi not to register any document pertaining to sale/lease of immovable properties situated in Cantt. Area, Varanasi without obtaining no objection certificate from the competent authority of Government of India, Ministry of Defence. The basis of the writ petition is that the land belongs to the cantonment board and the fake sale deed/lease deed are being executed and they are being registered.

From the avernments made in the writ petition, it is clear that the fake sale/lease deeds were being executed by those persons who were not entitled to execute the lease deed or sale deed and fake sale deeds were being registered in respect of the property belonging to the Ministry of Defence and after registration of the document, further litigation has to face to the Defence department for cancellation of the sale deed for getting it declared void in order to check such execution of fake sale deed/lease deed.

Having regard to the facts and circumstances of the case stated in the writ petition, we direct the Sub-Registrar (Registration) not to register any document and not to execute any sale deed/ lease deed of the land falling within the Cantonment Board and belonging to the Ministry of defence without there being no objection or permission by the Defence Estate Officer of the Cantonment Board Varanasi.

With the above observation, the writ petition is disposed of finally."

7. The above order was in respect of Varanasi Cantonment Board. Later on a PIL was filed being Public Interest Litigation (PIL) No. 74227 of 2010 **(Virendra Kumar and Others Vs. State of U.P. and Others)**, in which order passed by this Court in **Cantonment Board, Varanasi** (supra) was brought to the notice of the Court which was dealing with the said PIL. Thereafter, the Court issued directions to circulate the decision of Cantonment Board, Varanasi (Supra) to all the Sub Registrars. The order dated December 22, 2010 is being quoted below :

"On behalf of respondents 1 to 3, learned Standing Counsel seeks time to take instructions in the matter.

Our attention has been drawn by the writ petitioners to the order dated 28.8.2010 passed in Writ -C No.12897 of 2008, whereby the Sub-Registrar (Registration) has been directed not to execute any sale deed/lease deed of the land falling within the Cantonment Board and belonging to the Ministry of Defence without there being no objection or permission by the Defence Estate Officer of the Cantonment Board, Varanasi.

Learned Standing Counsel may seek instructions.

In the meantime, the Secretary, Institutional Finance, Govt. of U.P. is directed to circulate to all the Sub-Registrars a copy of the order dated 28.8.2010 passed by this Court in Writ-C No.12897 of 2008.

Place the matter on board on 12.01.2011."

8. In compliance of the above order, the Government of Uttar Pradesh vide Circular dated February 2, 2011 circulated the above decision of this Court. The Circular is being quoted below :

"आवश्यक / ... ...

प्रेषक,

संख्या -523/ ग्यारह -5-20 11

मधु माथुर
उप सचिव,
उत्तर प्रदेश शासन ।

सेवा में,
महानिरीक्षक निबन्धक
उत्तर प्रदेश इलाहाबाद ।

कर एंव निबन्धक अनुभाग-5 लखनऊ
दिनांक 21 फरवरी 2011

विषय :- छावनी परिषद की सीमा में आने वाली सम्पत्तियों के विलेख पंजीकरण के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक रिट याचिका संख्या-12897/ 2008 केन्टोमेन्ट बोर्ड वाराणसी बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 28 अगस्त 2010 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करें।

2- इस सन्बन्ध में मुझे यह कहने का निर्देश हुआ है कि मा० उच्च न्यायालय द्वारा पारित उपरोक्त आदेश पर अनुपालन सुनिश्चित कराते हुए सभी सम्बन्धित को भी उक्त आदेश के अनुपालन हेतु आवश्यक आदेश निर्गत करने का कष्ट करें।

संलग्नक : यथोपरि

भवदीया,
ह०अपठनीय
(मधु माथुर)
उप सचिव ।

संख्या / (1) / ग्यारह -5-20 11 तद दिनांक :

प्रतिलिपि उपमहानिरीक्षक निबन्धक/ वाराणसी कों संलग्नक की प्रति सहित अनुपालनार्थ प्रेषित ।

संलग्नक यथोपरि।

आज्ञा से
ह०
(मधु माथुर)
(उप सचिव)

कार्यालय महानिरीक्षक निबन्धक उत्तर प्रदेश इलाहाबाद।

संख्या 860 / विधि दिनांक 04.03.11

उक्त की प्रति समस्त उप / सहायक महानिरीक्षक निबन्धन उत्तर प्रदेश कों इस अनुरोध के साथ प्रेषित कि मा० उच्च न्यायालय द्वारा पारित आदेश का अनुपालन सुनिश्चित करायें।

ह० अपठनीय
सन्दीप कुमार शर्मा
उपर महानिरीक्षक निबन्धन (प्र०).
उत्तर प्रदेश, इलाहाबाद।

सत्यप्रतिलिपि"

9. On being informed about the above circular issued by the Government of Uttar Pradesh, the Court dealing with the above PIL being Public Interest Litigation (PIL) No. 74227 of 2010 **(Virendra Kumar and Others Vs. State of U.P. and Others)** disposed of the PIL on 3.8.2017. The said order is being quoted below :

" Heard learned counsel for the parties.

We need not retain the present writ petition any further, in view of the fact of that the counsel for the Cantonment Board has informed this Court that in view of the provisions of Cantonment Land Administration Rules, 1937 specifically Rule 15 no land of the Cantonment can be sold without prior permission of the Central Government. In the said

background, a Division Bench of this Court vide order dated 22.12.2010 has already issued a direction to the Secretary, Institution Finance, Govt. of U.P. to direct all Sub-Registrar within the State of Uttar Pradesh not to register any sale deed/lease deed in respect of the land falling within the Cantonment Board and belonging to the Ministry of Defence without no objection or permission of the Defence Estate Officer of the Cantonment Board, Varanasi.

We have been informed that such circular has been issued by the State of Uttar Pradesh.

In view of the aforesaid, no further directions are required to be made.

This Public Interest Litigation is disposed of."

10. The Court dealing with the Public Interest Litigation (hereinafter referred to as 'the PIL') has disposed of the PIL being satisfied that the land of Cantonment Board cannot be sold without prior permission of the Central Government/Defence Estate Officer as provided under Rule 15 of the Cantonment Rules, 1937. The fact was in the knowledge of the Court dealing with the PIL that land falling in the Cantonment Board was situated in the defence area, and therefore, such land cannot be transferred to anybody without having prior permission of the authority mentioned in the Rules, 1937 as it may cause security issues to the defence establishment as well as to the Nation. Rule 15 of the Cantonment Rules, 1937 is quoted below :

"5. Sale of land Prohibited-*The sale of land for any purpose without the definite orders of the Central Government is prohibited."*

11. The Sub Registrar is under obligation to abide by the order of this Court and the Circular issued by the State Government in light of the decisions of this Court and therefore, as there is no provision in the Registration Act, the Sub Registrar has rightly refused to register the deed of agreement to sale.

12. The submission of the petitioner that the agreement to sale is only with respect to the superstructure upon the land and there is no agreement to sale with respect to the land cannot sustain as the superstructure in question is on defence land and it cannot be treated as a separate entity. Rule 2(c) of the Cantonment Rules, 1937 defines 'building site' which includes open ground or courtyard enclosed by, or adjacent to the building erected thereupon. Therefore, the building also includes the land which belongs to the Cantonment Board. Rule 2(c) is delineated below:

"(2c) *–"building site" means a portion of land held or intended to be held for building purposes, whether any building be erected thereon or not, and includes the open ground or courtyard enclosed by, or adjacent to, any building erected thereupon;"*

13. The GGO-179 dated 12.09.1836 provides that the property of the Government could not be sold by the grantee but houses or other property thereon situated could be transferred subject to certain restrictions. The relevant provisions of the General Order are being quoted below :

*"**6. Conditions of occupancy-** No ground will be granted except on the following conditions, which are to be subscribed by every grantee as well as by those to whom his grant may subsequently be transferred:-*

***1st. Resumption of land-** The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.*

***2nd. Land belongs to Government.** Land cannot be sold by grantee. Trans fer of houses between military officers-The ground, being in every case the property of Government, can not be sold by the grantee, but houses or other property thereon situated may be transferred by one Military or Medical Officer to another without restriction except in the case of reliefs, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.*

***3rd. Arbitration in case of transfer on relief.** Transfer of house to civilian-If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, who does not belong to the army, until the consent of the Officer Commanding the Station shall have been previously obtained under his hand.*

***4th. Transfer to native-** When it is proposed, wide consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs. 5000, the sale must not be effected until the sanction of Government shall have been obtained through His Excellency the Commander-in-Chief.*

***7. Power to require owner to let house to Military Officer-**The owner of any house in a military cantonment not occupied by a person belonging to the army on duty at the station, or by a person in the service of Government directed or authorised by Government to reside therein, may be required to rent the same to any military officer belonging to the station who may require it to reside la, if the Officer Commanding the Station is satisfied that there is no other suitable house available with due regard to the rank of the claimant and to the duties he may have to perform.*

Vacation of house on sale to another military officer-In every such case, however, if the owner shall have formally intimated to the officer who has so obtained the house his desire to sell rather than let it, and the offer have not been accepted, the officer shall at any time be required to vacate it within a week of his receiving notice, through the Brigade Major or Station Staff Officer, that the house has been sold, with the consent of the Commanding Officer of the Station, to another military officer on duty at the station who requires it for his own residence.

Committee of Arbitration.- The rent to be paid in such cases, or the price to be paid for the house when the claimant accedes to the owner's Committee of Arbitration-The rent to be paid in such cases, or the agreeing as to the amount, by a Committee of Arbitration constituted as follows.]

[G.O. No. 1001, dated 3-12-1864]"

14. As already held the property for which agreement to sale is to be executed

falls within the ambit of land, therefore, the above GGO-179 dated 12.09.1836 would apply to the facts of this case which does not permit the grantee to sell the land.

15. Although the petitioner has submitted that he is not executing any sale deed, but only an agreement to sale by way of a registered deed, yet under the law, the petitioner cannot transfer any land without the prior permission of the authority of the Central Government. Thus, in the present case, the petitioner has attempted to do indirectly what he cannot do directly in a colourable manner. Moreover, the petitioner has not been able to show as to how he has obtained the property of the Cantonment Board, that is, whether he has taken prior permission of the authority concerned before taking possession of that very land through any person or the Cantonment Board. The legal principle ***quando aliquid prohibetur ex directo, prohibetur et per obliquum*** that when the law prohibits a particular act, it equally prohibits all indirect means of achieving the same result would be applicable and the petitioner cannot be allowed to use a circuitous route to achieve what is prohibited in law.

16. In every agreement to sale, certain conditions are stipulated, and upon fulfillment of those conditions, the vendor is bound to transfer the property personally. In the event of the vendor′s death, it is open to the vendee to initiate proceedings under Section 53A of the Transfer of Property Act for part performance. In such a case, the Court may either direct the legal representatives of the vendor to execute the sale deed, or it may itself direct the Sub Registrar to execute the transfer deed in favour of the vendee. Section 53A of the Transfer of Property Act is quoted below:-

"53A. Part performance.— *Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty:*

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

17. Therefore, the petitioner by colourable methods has tried to transfer the property to the third party which he cannot do. An agreement which, in substance, transfers possession, consideration, and incidents of ownership without prior NOC,

is a colourable action, void ab initio, and unenforceable under Section 23 of the Contract Act.

18. Moreover, and importantly, the petitioner has neither challenged the vires of the Government Order as well as the Rules nor the order/judgment passed by this Court in the PIL wherein it has been provided that before transferring the property, prior permission is required to be obtained from the competent authority.

19. The petitioner has simpliciter assailed the refusal order passed by the Sub Registrar refusing to register the agreement to sale which was done in light of the circular issued by the State Government in light of the decisions of this Court. Moreover, the refusal order of the Sub Registrar is appealable under Section 72 of the Registration Act.

20. As per Section 72 of the Registration Act, if any order is passed by Sub Registrar refusing registration of any document, the same is appealable before the Registrar (the ADM (F/R)). Sections 72 and 73 of the Registrar Act, are quoted below :

*"**72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.**-(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.*

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration."

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.-*(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.*

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints. "

21. Furthermore, in case the Registrar (ADM F/R) refuses to order the document to be registered, a suit can be instituted in a Civil Court under Section 77 of the Registration Act, which is delineated below :

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or

his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections(2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

22. The decision relied upon by the learned counsel on behalf of the petitioner in **Nirbhay Kr. Shahabadi and another vs. State of Jharkhand and others, MANU/JH/15012013** does not apply to the facts and circumstances of the case as the same was not in respect of land within the jurisdiction of the Cantonment Board. Ergo, this judgment will not come to the aid of the petitioner.

23. If any order is passed by this Court directing that without prior permission of the authorities no sale deed would be executed, the authorities within the State are bound to follow the same as the decisions of this Court operates as the law of the land within the State in view of Articles 215 and 226 of the Constitution of India and in respect of the land belonging to the Cantonment Board, no land can be sold without prior permission of the Central Government or the authority concerned as required under the law. It is further observed that the definition of 'building site' includes open ground or courtyard enclosed by, or adjacent to, any building erected thereupon.

24. The law mandates that any person before transferring any property is required to take prior permission from the competent authority. It is still open for the petitioner to first obtain the permission from the concerned authority and thereafter transfer the property either by way of agreement to sale which would culminate into a sale deed after fulfilling the conditions mentioned in the agreement to sale. There is no bar for moving an application for obtaining permission from the competent authority and if there is a refusal order in granting permission, it is still open for the petitioner to challenge the order passed by the authorities under Rule 15 of the Cantonment Rules, 1937 for granting permission.

25. The maxim ***nemo dat quod non habet*** signifies that no one can convey a better title to property than what he himself possesses; in other words, a transferor cannot pass ownership rights which he does not legally own. This principle safeguards true ownership and prevents unlawful enrichment of a transferee at the expense of the rightful owner.

26. In the present case, the petitioner has tried to transfer the property in question in a colourable method which he could not do directly. Moreover, the petitioner has failed to provide proof as to how he has obtained the property of the Cantonment Board, that is, whether he has taken prior permission of the authority concerned before taking possession of that very land through any person or the Cantonment Board as till date the name of the petitioner has not been entered into the records of the Cantonment Board.

27. The Sub Registrar has refused to register the agreement to sale deed, which

is in the preceding step to a sale deed of the house as well as the land attached to the building. The above rejection is on the basis of the Government order as well as judgment and order passed by this Court directing that the property belonging to the Cantonment Board shall not be registered by the Sub Registrar until and unless prior permission is obtained from the concerned authority. The order of the Government has obviously been passed keeping in mind national interest and the security threat to the assets of the army and to the army personnel staying in the cantonment area. Furthermore, the Sub Registrar has refused to register the agreement to sell and against the said order, there is a provision under Section 72 of the Registration Act to file an appeal and thereafter there is a provision to challenge the order of appeal under Section 77 of the Registration Act by filing a suit. Therefore, the petitioner is directed to avail the appropriate remedy, if he desires to do so.

28. In light of the reasons above mentioned, we are of the view that the writ petition filed by the petitioner is not maintainable and is accordingly dismissed. There shall be no order as to costs.

(2025) 9 ILRA 536
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.09.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000050 of 1997

Naimish Vallabh ...Petitioner
Versus
Addl. Commissioner Lucknow Division ...Respondent

Counsel for the Petitioner:
P.L. Misra, Amit Kumar Pathak, Askari Naqvi, Mohammad Alishah Faruqi, Mohammad Aslam Khan, Rajesh Mishra, Rakesh Pathak, S.K. Tripathi, Sibte Alam Khan

Counsel for the Respondent:
C.S.C., Askari Naqvi, Madhulika Yadav, S.K. Tripathi

ISSUE FOR CONSIDERATION

Whether, after the final disposal of Appeal No. 466/1975 on 11.10.1976 and the appellate order attaining finality due to non-challenge, the petitioner was entitled to reopen the ceiling proceedings by filing applications after 14 years and maintaining a fresh appeal (No. 86/89-90) against the Prescribed Authority's order deciding Issues 3, 4 and 5.

HEADNOTE

U.P. Imposition of Ceiling on Land Holdings Act, 1960 — Sections 10(2), 4-A, 14 — Ceiling proceedings — Objections rejected — 48.16 irrigated acres declared surplus — Appeal partly allowed — Remand confined to Issues 3, 4, 5 — Appeal kept pending — Prescribed Authority recorded findings and returned case — No objection filed — Appeal finally decided on 11.10.1976 — Order not challenged — Finality — Subsequent appeal not maintainable — Writ petition dismissed.

HELD

Notice under Section 10(2) was issued to the petitioner's father. Objections were rejected. Prescribed Authority declared 48.16 irrigated acres surplus. In Appeal No. 466/1975, the appellate court affirmed findings on Issues 1, 2, 6, while remanding Issues 3, 4, 5 under Section 4-A to the Prescribed Authority with a direction to return findings keeping the appeal pending. Findings were recorded on 12.07.1976; no objection was filed by the tenure holder. The appeal was finally decided on 11.10.1976. The order attained finality and the State took possession under Section 14 and allotted the land to landless persons. After 14 years, the petitioner sought reopening of the matter

and filed Appeal No. 86/89-90 against the order deciding Issues 3, 4, 5. The appellate authority dismissed the appeal as not maintainable, holding that the Prescribed Authority's order had merged into the appellate order dated 11.10.1976 and no fresh appeal lay thereafter. *Held:* Once Appeal No. 466/1975 was finally decided on 11.10.1976, the findings on remanded issues merged into the appellate order and attained finality. A subsequent appeal against the same findings was not maintainable. There was no jurisdictional error in dismissal of Appeal No. 86/89-90. Writ petition dismissed. (E-5)

CASE LAW CITED

Ram Asrey v. Additional Commissioner, Jhansi Division, 2008 (105) RD 608; Ram Bhajan v. Chief Revenue Officer/Prescribed Authority, Mirzapur, 2001 (44) ALR 541.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960.

List of Keywords

Ceiling proceedings — Surplus land — Remand — Maintainability of appeal

CASE ARISING FROM

Judgment and order dated 31.07.1996 passed by Additional Commissioner-I, Lucknow Division in Ceiling Appeal No. 86/89-90 affirming the order dated 16.08.1990 of the Prescribed Authority.

Appearances for Parties

Advs For Petitioner: P.L. Misra, Amit Kumar Pathak, Askari Naqvi, Mohammad Alishah Faruqi, Mohammad Aslam Khan, Rajesh Mishra, Rakesh Pathak, S.K. Tripathi, Sibte Alam Khan.
Advs For Respondents: C.S.C., Askari Naqvi, Madhulika Yadav, S.K. Tripathi.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner, Sri S.P. Maurya, learned Standing Counsel for the State-respondent and Ms. Madhulika Yadav, learned counsel for the proposed respondents.

2. By means of the present writ petition, the petitioner has prayed as under :-

"(a) That by means of a writ, direction or order in the nature of certiorari the judgment and order dated 31.7.1996, passed by the Additional Commissioner I, Lucknow, as contained in Annexure No.9 to the writ petition, as well as the judgment and order dated 16.8.1990, passed by the Prescribed Authority, as contained in Annexure No.7 to the writ petition, be quashed;

(b) That by means of a writ, order or direction in the nature of mandamus the opposite parties no. 2 and 3 be directed to decide the dispute in accordance with the order dated 13.3.1976, passed by the Prescribed Authority;

(c)...

(d)..."

3. The present writ petition is directed against the judgment and order dated 31.07.1996 passed by Additional Commissioner-I, Lucknow, in Ceiling Appeal No. 86/89-90, whereby the appeal was dismissed as not maintainable and the order dated 16.08.1990 of the Prescribed Authority was affirmed.

4. Factual matrix of the case is that the petitioner's father Shri Digvijai Prasad was issued notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (as amended in 1972)

on 25.08.1974. He filed objections contending :-

(i) Sale of 12.25 acres in favour of Smt. Nanhee Devi in 1970, duly mutated on 22.01.1971; she was in separate possession since then. It was also pleaded that separation had taken place between the petitioner and Smt. Nanhee Devi 15 years ago and since then, they are living in two distinct villages and were not living as husband and wife.

(ii) Partition of 1971 between petitioner and his father by order of Sub Divisional Officer dated 14.04.1971; land mutated in petitioner's favour.

(iii) Independent tenure holders: Smt. Nanhee Devi, being a separated wife, was an independent recorded tenure holder, hence, her land could not be clubbed with that of the petitioner's father.

(iv) The unirrigated land and Usar land of village Saidpur has been shown as irrigated land.

5. The objections of the father of the petitioner were dismissed by the prescribed authority and it was held as under :-

(i) that partition suit was pending as on 24.01.1971; petitioner was a minor at that time.

(ii) Sale deed in favour of Nanhee Devi was before 24.01.1971 but separation was not judicial.

6. Consequently, 62.79 acres (unirrigated) (equivalent to 48.16 irrigated acres) was declared as surplus land.

7. An earlier appeal, registered as Appeal No. 466/1975, had been partly allowed by the Ist Additional District Judge, Sitapur, on 13.03.1976, whereby findings on some issues were affirmed but issues 3, 4, 5 were remitted to the prescribed authority for fresh findings. Shri Digvijai Prasad had also preferred Writ Petition No. 1086/1976, which was dismissed vide judgment and order dated 30.8.1978.

8. After the death of Shri Digvijai Prasad, the present petitioner was substituted and carried on the proceedings. His statutory appeal, registered as Appeal No. 86/89-90 and the same was transferred to the court of Additional Commissioner-I, Lucknow Division, Lucknow for disposal. In pursuance to the judgment and order dated 13.3.1976, the prescribed authority was required to give findings on the issue Nos.3, 4 and 5 and return the same to the appellate court. The prescribed authority did not decide these issues in the light of the observations made by the appellate court.

9. The Appeal No. 86/89-90 was finally dismissed on 31.07.1996 by the Additional Commissioner, Lucknow, as not maintainable. A review application filed against the said order is stated to be still pending. Meanwhile, the opposite parties are proceeding with the allotment of the surplus land. The petitioner claims to be in possession and apprehends irreparable injury in the event of dispossession.

10. Submission of learned counsel for the petitioner is that the appellate authority has failed to exercise the jurisdiction vested in it and erred in dismissing the appeal as not maintainable instead of adjudicating it on merits.

11. It is further submitted that the Prescribed Authority did not record

findings on issues 3, 4 and 5 in the manner directed by the appellate court in its order dated 13.03.1976, resulting in failure of justice.

12. Learned counsel for the petitioner submits that the order of the Prescribed Authority merged into the appellate order dated 13.03.1976 and hence, until disposal of the appeal, the determination of surplus land could not be treated as final. The acceptance of choice of land by the Prescribed Authority was premature and beyond jurisdiction as the appeal was pending.

13. It is also submitted that lands standing in the names of the petitioner and Smt. Nanhee Devi, being those of independent tenure holders, could not be clubbed with the holdings of Shri Digvijai Prasad.

14. In support of his submission, he placed reliance upon the following judgments :-

(i) **Ram Asrey and others Vs. Additional Commissioner Jhansi Division, Jhansi and others [2008 (105) RD 608]**. Relevant paragraphs-8, 9, 13 and 14 are being quoted as under :-

"8 . Taking support of the aforesaid section, learned Counsel for respondents submits that unless and until order has become final, no allotment can be made of surplus land declared of a tenure holder. Reliance has been placed upon a judgement reported in 1984 ALJ 403 Raj Bahadur and Ors. v. District Judge, Hamirpur and Anr. and reliance has been placed upon Para 4 of said judgement. The same is being reproduced below:

"4. The petitioners claimed to be the allottees of the land. It is said that the allotment was made on 25,6.1976. It should be seen that no allotment could be made on the said date as the ceiling proceedings had not become final before the Prescribed Authority. The Prescribed Authority finally disposed of the ceiling case on 2 J. 12.1977 as is clear from the judgment of this Court in the earlier writ petition (Annexure 2 to this petition). Thereafter, an appeal was filed. The appellate court decided initially on 3.2.1979. I have already stated above that against the said appellate judgment dated 3.2.1979, the earlier writ petition was filed and 1 allowed the same and remanded the case again to the appellate court, which finally decided the appeal by the aforesaid impugned judgment dated 5.9.1981. It is, therefore, obvious that during the pendency of these ceiling proceedings first before the Prescribed Authority and thereafter before the appellate court, no valid allotment could be made in favour of anyone. In the ceiling proceedings the alleged allottees did not have any locus standi. The contest was between the tenure-holder and the State. It is not necessary to consider the case of the transferees etc. from the tenure-holder to determine whether in the ceiling proceedings such transferees-have a locus standi or not. However, so far as the alleged allottees are concerned. I am clear in my mind that they did not come at all in the picture till the ceiling proceedings became final and the notification under Section 14 of the Act is issued. I have already stated above that the final verdict of the appellate court was that the tenureholder did not hold any surplus land and, therefore, the notice under Section 10(2) of the Act stood discharged. In such a situation, there was no question of any

surplus land vesting in the State and being the subject-matter of any allotment.

9 . Another judgement has been relied upon by learned Counsel for respondents reported in MANU/UP/0297/2001 : 2001 (92) RD 538Ram Bhajan v. Chief Revenue Officer/Prescribed Authority , Mirzapur and Ors. Reliance has been placed upon para 13, 14, 15, and 16 of the said judgement. The same are being reproduced below:

13. It is well settled that the matter of declaration of the land as surplus is between the State and the tenure holder and nobody comes in between and thus once the State has chosen not to take up the matter to the higher forum, challenging the judgment of the Prescribed Authority by which notice for declaration of the land as surplus itself was withdrawn, no argument can be advanced by the petitioner raising any finger on this aspect that the tenure holder might have surplus land if the matter is examined in further details in the light of the facts as are being pleaded by him.

14. It is also settled that the allottee cannot acquire any better right than the right as exists with the State and thus the State itself having no right to the land as the same did not remain as surplus the claim of the allottee will fall short as the giver himself is not possessed to part anything to the petitioner.

15. The decisions as has been cited by the learned Counsel for the petitioner although lays down that the allottee has to be given opportunity of hearing before cancellation of the allotment, but in my opinion those decisions have no application to the facts of the present case. Those decisions can only apply when there is proceedings for cancellation of the allotment and some impropriety and illegality in the allotment proceedings are alleged, which can be subject matter of enquiry and scrutiny in that cancellation proceedings for which certainly the allottee will have to be given opportunity of hearing so that he can demonstrate the completion of all the formalities and validity of the allotment. But so far the present case is concerned neither the tenure holder has taken any ground nor have challenged the validity of the allotment on any ground which may be available for cancellation of the allotment. Here by virtue of the fact that by the judgement of the Prescribed Authority no land remained as surplus and thus as a consequence thereof the Prescribed Authority has directed to restore the correct position of the revenue records and therefore, the decision as has been cited by the learned Counsel for the petitioner will not fit in the facts of the present case.

16. In fact the land having been given to the allottee by the Collector, the allottee cannot get any better title than the Collector was possessed, as the petitioner has stepped into the shoes of the Collector. In view of the judgment of the Prescribed Authority dated 22.5.86 the restoration of the correct entry in the revenue record and even restitution of the possession will be an automatic follow-up to which the petitioner can have no say in the matter as he has no locus standi to intervene in the matter of declaration of the land as surplus.

13. In Ram Bhajan's case (supra), this Court has further held that "if order has become final and it has not been challenged by the State, the restoration of

possession after discharge of notice in the revenue record is an automatic follow-up to which allottee can have no say and they have no locus-standi to intervenes in the matter of declaration of the land as surplus."

14. In view of aforesaid proposition of law as held by this Court and in view of Section 14 of the Act, it is clear that unless and until proceeding against tenure holder has become final, in case, any allotment is made and if the notice under Section 10 is discharged, the tenure holder is entitled to possession. In any event, if the respondent State during pendency of proceeding on the basis of order passed by prescribed authority, allot the land to certain persons and handover possession, as soon as the notice is discharged the restoration of possession to the tenure holder is automatic. The allottees in that circumstances, will have no right to say regarding the validity and genuineness of the order passed in favour of tenure holder. It is only State, who comes in picture to challenge the order passed, if any, in favour of tenure holder. Admittedly, the order dated 2.6.1999 has become final as it regards to the State. State has not filed any writ petition challenging the said order. Therefore, I am of the opinion that in spite of fact that petitioners were permitted to be impleaded before the Appellate Authority and they have been given opportunity to be heard but in the facts and circumstances of the case, as the appellate authority has already discharged the notice vide its order dated 2.6.1999 and has held that no land of respondent No. 2 is surplus, therefore, consequence of that will be that respondent No. 2 will be entitled to get possession of surplus land held by prescribed authority in his earlier order. Petitioners will have no right to challenge the order passed by Appellate Authority dated 2.6.1999. Only the State can have a say regarding the validity of the order dated 2.6.1999 passed by Appellate Authority but admittedly, the State has not filed any writ petition before this Court, challenging the order passed by appellate authority and that has become final."

(ii) **Ram Bhajan Vs. Chief Revenue Officer/ Prescribed Authority, Mirzapur and others [2001 (44) ALR 541]**. Relevant paragraphs-13 and 14 are being quoted below :-

"13. It is well settled that the matter of declaration of the land as surplus is between the State and the tenure holder and nobody comes in between and thus once the State has chosen not to take up the matter to the higher forum, challenging the judgment of the Prescribed Authority by which notice for declaration of the land as surplus itself was withdrawn, no argument can be advanced by the petitioner raising any finger on this aspect that the tenure holder might have surplus land if the matter is examined in further details in the light of the facts as are being pleaded by him.

14. It is also settled that the allottee cannot acquire any better right than the right as exists with the State and thus the State itself having no right to the land as the same did not remain as surplus the claim of the allottee will fall short as the giver himself is not possessed to part anything to the petitioner."

15. Smt. Madhulika Yadav, Advocate by means of impleadment application has opposed the submission advanced by learned counsel for the petitioner on the

ground that proposed opposite parties who have filed application for impleadment were allotted land from the surplus land in the year 1990. The proposed respondents are patta holders and poor landless scheduled caste persons and possession was handed over to them, who have been continuously in possession of the same since 1990 to 1997 and their names have been recorded in revenue record (khatauni), therefore, any order without impleadment will be bad in the eyes of law.

16. After having heard the submission advanced by learned counsel for the parties, I perused the material on record as well as the law report cited by learned counsel for the petitioner.

17. Ms. Madhulika Yadav, Advocate was heard in opposition without allowing impleadment application. The rights of the proposed respondents shall be subject to decision passed in the writ petition.

18. The petitioner's father Shri Digvijai Prasad was issued notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (as amended in 1972) on 25.08.1974. He filed objections stating therein that sale of 12.25 acres in favour of Smt. Nanhee Devi in 1970, duly mutated on 22.01.1971; she was in separate possession since then. It was also pleaded that separation had taken place between the petitioner and Smt. Nanhee Devi 15 years ago and since then, they are living in two distinct villages and were not living as husband and wife. Partition of 1971 between petitioner and his father by order of Sub Divisional Officer dated 14.04.1971; land mutated in petitioner's favour. Independent tenure holders: Smt. Nanhee Devi, being a separated wife, was an independent recorded tenure holder, hence, her land could not be clubbed with that of the petitioner's father. The unirrigated land and Usar land of village Saidpur has been shown as irrigated land.

19. The objections filed by the father of the petitioner were dismissed by the prescribed authority holding that the partition suit was pending as on 24.01.1971 and the petitioner was a minor at that time. Sale deed in favour of Nanhee Devi was before 24.01.1971 but separation was not judicial.

20. Consequently, 62.79 acres (unirrigated) (equivalent to 48.16 irrigated acres) was declared as surplus land. At earlier point of time Appeal No. 466/1975, had been partly allowed by the Ist Additional District Judge, Sitapur, on 13.03.1976, whereby findings on some issues were affirmed but issue Nos.3, 4, 5 were remitted to the prescribed authority for fresh findings. Shri Digvijai Prasad had also preferred Writ Petition No. 1086/1976, which was dismissed vide judgment and order dated 30.8.1978.

21. After the death of Shri Digvijai Prasad, the present petitioner was substituted and carried on the proceedings. His statutory appeal, registered as Appeal No. 86/89-90 and the same was transferred to the court of Additional Commissioner-I, Lucknow Division, Lucknow for disposal. In pursuance to the judgment and order dated 13.3.1976, the prescribed authority was required to give findings on the issue Nos.3, 4 and 5 and return the same to the appellate court. The prescribed authority did not decide these issues in the light of the observations made by the appellate court.

22. The ceiling proceeding under Section 10(2) of The U.P. Imposition of

Ceiling on Land Holdings Act, 1960 was initiated against Digvijay Prasad, the father of the petitioner and he filed the objection and the prescribed authority framed six issues and ultimately dismissed the objection of Digvijay Prasad on 31.10.1975 after taking the evidence and declared 48.16 acre surplus land against which Digvijay Prasad filed appeal No.466 of 1975 and Additional District and Sessions Judge, Sitapur partly allowed the appeal on 13.03.1976 and confirmed the finding on issue Nos.1, 2 and 6 and the case was remanded back to the prescribed authority to decide the issued Nos.3, 4, 5 as per provisions of Section 4-A of Ceiling Act and further directed to decide issued Nos.3,4, 5 within a month and the finding recorded by the prescribed authority be returned back so that the appeal may be finally decided.

23. The prescribed authority issued notice to Digvijay Prasad and he appeared in the court on 26.05.1976 and given statement that he do not want to give evidence and he has filed writ petition before Hon'ble High Court but no restrained order was produced and State was directed to produce evidence. Meantime, Digvijay Prasad again moved an application on 02.07.1976 and prayed to stay the present proceeding till the decision of writ petition but as per order dated 26.04.1976 the possession of tenure holder shall not be disturbed and no restrained order was passed, therefore, the prescribed authority decided issue Nos.3, 4, and 5 on 12.07.1976 (Annexure SCA1 to supplementary counter affidavit) and prescribed authority sent the file back to the District Judge and the District Judge, Sitapur fixed the date 20.08.1976 for filing the objection against the finding recorded on issue Nos.3, 4 and 5 but Digvijay Prasad neither appeared nor filed any objection against the findings and he has also not given any fresh proposal to declare the surplus land and the District Judge sent file back to the prescribed authority on 20.08.1976 (Annexure SCA 2 to supplementary counter affidavit) for sending fresh proposals for declaration of surplus land as per order dated 13.03.1976 within 15 days and fixed the date on 15.09.1976 for further order and the prescribed authority sent the proposal on 30.08.1976 to District Judge, Sitapur and the District Judge finally decided Civil Appeal No.466 of 1975 vide order dated 11.10.1976 which was never challenged by the petitioner or his father Digvijay Prasad and the order dated 11.10.1976 become final.

24. Writ Petition No.1086 of 1976 Digvijay Prasad Vs. State of U.P. and Another was decided on 04.10.1989 but father of the petitioner suppressed about the order dated 11.10.1976 and the State taken possession over surplus land under Section 14 of U.P. Imposition of Ceiling on Land Holdings Act, 1960 and allotted the surplus land to several landless persons and the said allotment has also became final.

25. The petitioner filed an application to the prescribed authority on 26.07.1990 (Annexure SCA 5 to supplementary counter affidavit) after a lapse of 14 years and prayed that the allotment of surplus land should be stopped and further stop to take possession from petitioner and second application was filed on 26.07.1990 in which prayer was made to set aside ex parte order dated 12.07.1976 and decide the case after taking evidence on issues 3, 4 & 5 and the petitioner further filed an application on 09.08.1990 and given choice of the land suppressing the order dated

11.10.1976 passed by District Judge, Sitapur which become final due to non challenge of the same before any forum.

26. The State has filed the order dated 12.07.1976, 20.08.1976, 30.08.1976 and 11.01.1976 before the prescribed authority and the prescribed authority rejected both the applications by a reasoned order dated 16.08.1990 without mentioning aforesaid orders and the appeal filed by the petitioner was also dismissed on 31.07.1996 by the Additional Commissioner, Lucknow as not maintainable.

27. The appellate authority has dismissed the appeal No.86/89-90 on the ground that while allowing the appeal partly, the Ist Additional District Judge, Sitapur on 13.03.1976 remanded the matter back to the prescribed authority keeping the appeal pending. The prescribed authority after deciding the issue Nos.3, 4 and 5 listed it in the pending appeal which was finally decided the appeal on 11.10.1976. The order passed in the appeal finalized was not challenged by the petitioner in writ petition, or in revision or before any forum, therefore, the judgment and order passed in the appeal became final.

28. The appeal No.86/89-90 was filed against the order passed by the prescribed authority for deciding issue Nos.3, 4 and 5 before the Additional Commissioner, Lucknow, who dismissed the appeal as not maintainable on the ground that the appeal has already been decided in which the order of prescribed authority was affirmed, therefore, the appeal No.86/89-90 was dismissed on 31.07.1996. The order passed by the appellate court does not suffer from any infirmity or illegality in view of the fact that pending appeal against the judgment and order dated 13.03.1976 the matter was remanded back to the prescribed authority to decide issue Nos.3, 4 & 5 afresh keeping the appeal pending. Thereafter, the matter was decided by the prescribed authority and was placed in the pending appeal which has been decided by the appellate court which has not been assailed at any forum, therefore, the judgment and order passed in the appeal attained finality.

29. The appellate authority has not exercised jurisdiction vested in it due to reason that earlier appeal which was kept pending has been decided and the next appeal No.86/89-90 was not maintainable. The finding recorded by the prescribed authority on the issue Nos.3, 4 & 5 was duly submitted before the appellate court which was accepted and the appeal was dismissed vide order dated 11.10.1976.

30. Subsequent appeal filed against the order of prescribed authority passed in deciding the issue Nos.3, 4 & 5 and appeal No.86/89-90 the finding recorded by the appellate authority does not suffer from any infirmity or illegality as was held that the appeal is not maintainable. The order of the prescribed authority merged into appellate court order passed at earlier point of time, therefore, the appeal No.86/89-90 was not maintainable.

31. In case the petitioner was aggrieved by the order passed by the appellate court at earlier point of time accepting the order of prescribed authority the petitioner was aggrieved, he would have filed the writ petition against that order. There was no occasion to file fresh appeal for the same purpose. During pendency of appeal remanding the matter to the prescribed authority by recording finding of issue Nos.3, 4, 5 the prescribed

authority decided the issue and placed it in the pending appeal, which was subsequently dismissed and the same was not assailed at any forum, therefore, the order passed in the appeal attained finality.

32. In regard to order passed in the appeal no.86/89-90 vide judgment and order dated 31.07.1996 the review application filed against the said order has already been decided but the date of order was not pointed out and the same has not been assailed in the writ petition. The judgments relied upon by learned counsel for the petitioner which have been noticed in the present judgment are not applicable to the facts and circumstances of the case. The appeal has rightly been dismissed as not maintainable.

33. In view of totality of facts and circumstances of the case, the present writ petition filed against order of prescribed authority and passed in the subsequent appeal No.86/89-90 do not suffer from any infirmity or illegality.

34. The writ petition lacks merit and is hereby **dismissed**.

35. No order as to costs.

(2025) 9 ILRA 545
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.09.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 528 BNSS No. 908 of 2025

Kumar Vikas ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Pranjal Jain, Nitin Mathur, Purnendu Chakravarty

Counsel for the Opposite Parties:
G.A.

Issue for consideration
Preliminary Objection as to maintainability of Application u/s 528 BNSS-

Headnotes
Default Bail-Default bail application filed-rejected-impugned- on account of non-filing of complaint within ninety days-from the date of arrest-allegation against applicant being an employee of Ordnance Factory-was sharing confidential information and documents through WhatsApp to an agent of Pakistan-preliminary objection-Section 21(4) of the Act 2008-appeal shall lie to the High Court against an order of the Special Court granting or refusing bail-notwithstanding contained in Section 378 (3) Cr.P.C.- no otherwise definition can be given against the intent of the legislature. Application not maintainable-**dismissed.**
Held, apparent from the provision of Section 21(4) of the Act 2008 that an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail, notwithstanding contained in Sub Section (3) of Section 378 of the Cr.P.C. This provision is overt in its mandate and while applying this provision in the present case, it is apparent that this does not speak regarding any difference of any kind of refusing or granting bail, meaning thereby that if the Special Court (NIA) grants or refuses the bail, the same is amenable to the provisions of the appeal, prescribed under Section 21 of the Act 2008 and, therefore, in presence of the obvious provisions, no otherwise definition can be given against the intent of the legislature. (E-9)

Case Law Cited
1. Harendra Vs. State of U.P. and another reported in 2020 SCC OnLine All 850
2. Madhu Limaye Vs. the State of Maharashtra, reported in NA528 No. 908 of 2025 4 (1977) 4 SCC 551
3. Amar Nath and others Vs. State of Haryana and another, reported in (1977) 4 SCC 137

4. V.C. Shukla Vs. State reported in 1980 Supp SCC 92

List of Acts

National Investigation Agency Act, 2008
Indian Penal Act

List of Keywords

Default bail application; on account of non-filing of complaint, within ninety days, from the date of arrest; appealable under the provision of Act 2008 and therefore, being an efficacious and alternative statutory remedy

Appearances of parties

Counsel for Applicant(s) : Pranjal Jain, Nitin Mathur, Purnendu Chakravarty
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Sri Purnendu Chakravarty, learned counsel assisted by Ms. Aishwarya Saxena, Mr. Pranajal Jain and Mr. Rohit Kanaujia, learned counsels for the applicant and Sri Shiv Nath Tilhari, learned counsel for the State of U.P.

2. Present application is directed against the order dated 7.7.2025 passed by learned Additional Sessions Judge, Court No.3/Special Judge/NIA, Lucknow whereby the default bail application on account of non-filing of complaint, within ninety days, from the date of arrest, has been rejected.

3. At the very outset, a preliminary objection has been taken by Sri Shiv Nath Tilhari, learned counsel appearing for the State that the F.I.R. No.2/2025 dated 19.3.2025 was registered under Section 148 BNS and Section 3/4/5 of the Official Secrets Act, 2023 (hereinafter referred to as 'the Act 2023'), against the applicant, while alleging that the applicant being an employee of Ordnance Factory, Kanpur, was sharing confidential information and documents through WhatsApp to one Neha Sharma who is said to be an agent of Pakistan, compromising the safety and interest of the Country. He submits that the schedule as prescribed under the National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act 2008') reveals that Chapter VI of the Indian Penal Code [Sections 121 to 130 (both inclusive)] are find mention and, therefore, this is amenable to the jurisdiction of Special Court designated/constituted under the scheme of the Act 2008 read with the Rules 2008 made thereunder. He submits that Section 121A of I.P.C. corresponds to Section 148 in Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'the BNS'). He further submits that the order impugned dated 7.7.2025 has admittedly been passed by the Special Court (NIA) wherein default bail application has been rejected. He argued that any order passed by the Special Court (NIA) is appealable as per the provisions given under Section 21 of the Act 2008.

4. For ready reference, Section 21 of the Act 2008 is reproduced hereinunder:-

"21. Appeals. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order

including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

5. Referring to Sub Section (4) of Section 21, he submits that an appeal shall lie to the High Court, against an order of the Special Court, granting or refusing bail and in the present case, the default bail application has been rejected, thus, he submits that the order impugned dated 7.7.2025 passed by the Special Court (NIA) is appealable under the provision of Act 2008 and therefore, being an efficacious and alternative statutory remedy available to the applicant, the present application under Section 482 Cr.P.C. is not maintainable, as such, this application may be dismissed on this ground alone.

6. Per contra, learned counsel for the applicant has opposed the contention aforesaid and submits that Section 167(2) Cr.P.C. (corresponding to Section 187(3) BNS, 2023) is a statutory provision which confers indefeasible right upon accused to be released on bail, on non-filing of charge sheet, within the prescribed time period whereas Section 439 Cr.P.C./Section 483 Bharatiya Nyaya Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS') is regular bail procedure and is wholly discretionary in nature. He also submits that Sub Section (1) (2) of Section 21 of Act 2008 provides right to appeal against the Judgment, sentence or order, not being an interlocutory order. Further submitted that Section 21(3) of the Act provides an exclusion clause, restricting appeals against interlocutory orders and Section 21(4) of the Act 2008 prescribes the right to appeal against an order granting or refusing bail which is to be construed with reference to Section 439 Cr.P.C./483 BNSS and does not apply to Section 167 (2) Cr.P.C./187(3) of BNSS 2023.

7. In support of his contention, he has placed reliance on a Judgement of this Court in the case of **Harendra Vs. State of U.P. and another** reported in **2020 SCC OnLine All 850** and has referred to para 13, which reads as under:-

"13. Thus, on the facts of the case that the applications for default bail were filed prior to the filing of the charge-sheet and following the law as laid down by the Supreme Court in the case of Union of India Through General Bureau of Investigation v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav (Supra), I am of the view that the applicants were entitled to be enlarged on statutory bail and non-grant of statutory bail and the rejection of the application for grant of statutory bail was wholly untenable in law."

8. He also argued that non-filing of charge sheet within the prescribed time, mandates release of an accused under statutory remedy of default bail and such

release is a deemed release under Chapter XXXIII of Cr.P.C., however, order for the bail can be cancelled under Section 439 (2) of Cr.P.C. which is subject to cancellation and, therefore, any order which is subject to cancellation, withdrawal or recession, would not be a final order. He also added that test of finality has to be seen in terms of Sub Section (2) which bars alteration or review of Judgment or final judgement except of clerical or arithmetical errors and since this Court possesses inherent power to give effect to any order under this Code empowers it to give effect to Section 167 (2) of Cr.P.C. while directing the release of an accused on statutory bail.

9. Concluding his arguments, he submits that the order passed under Section 167(2) Cr.P.C./187(3) BNSS is not passed, on the merits of this case, thus, the same cananot be treated as a final order. and, therefore, the instant application under Section 482 Cr.P.C./582 of BNSS is maintainable and, therefore, the preliminary objection may be rejected.

10. Having heard learned counsel for the parties and after perusal of the record, it transpires that at the very inception, the preliminary objection has been raised by the counsel appearing for the State, on the premises of Section 21 of the Act 2008, while submitting that the appeal is maintainable against any order passed by the Special Court constituted/designated under the provisions of Act 2008.

11. By way of the present application, the order passed under Section 187(3) of BNSS whereby the default bail has been rejected, is under challenge. The provision prescribed under Section 187(3) of BNSS contains the 'statutory bail', which in fact identifies the indefeasible right given to the accused person. In fact, the right of default bail can be exercised once and not likewise the other provision of bail as prescribed under Section 439 of the Cr.P.C. where at the subsequent stage ,more bail applications can be instituted, in form of second, third and fourth bail application and so on.

12. The provision of statutory bail under Section 187(3) BNSS/167(2) Cr.P.C. is whether an interlocutory order or a final order. The test which could be applied, for an order, being interlocutory, intermediary or final, can be summarized in two folds; firstly that any such order, which substantially affects the right of the accused or parties, cannot be termed as an interlocutory order and secondly, any right, which accrue out of some statutory provisions, is also not an interlocutory order. Time and again, this issue has exhaustively been dealt with by the Apex Court starting from a three Judge Bench decision of the Hon'ble Apex Court in the case of **Madhu Limaye Vs. the State of Maharashtra**, reported in **(1977) 4 SCC 551** wherein the ratio drawn in the case of **Amar Nath and others Vs. State of Haryana and another**, reported in **(1977) 4 SCC 137** has partly been affirmed, holding that the term 'interlocutory order' as is used in Section 397 of the Cr.P.C. does not invariably mean the converse of the term of 'final order' and certain guidelines were provided to examine that a particular order is not an 'interlocutory order'.

13. Subsequently, the Apex Court in the case of **V.C. Shukla Vs. State** reported in **1980 Supp SCC 92**, considering the ratio drawn in Amar Nath **(supra)** and Madhu Limaye **(supra)**, has held that the intermediate, quasi final and final orders are revisable. In this view, the provision of

statutory bail under Section 187(3) of BNSS is an intermediary order and the same is revisable, subject to any other provision provided in a special Act.

14. Coming to the crux of the issue of maintainability, it is apparent from the provision of Section 21(4) of the Act 2008 that an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail, notwithstanding contained in Sub Section (3) of Section 378 of the Cr.P.C. This provision is overt in its mandate and while applying this provision in the present case, it is apparent that this does not speak regarding any difference of any kind of refusing or granting bail, meaning thereby that if the Special Court (NIA) grants or refuses the bail, the same is amenable to the provisions of the appeal, prescribed under Section 21 of the Act 2008 and, therefore, in presence of the obvious provisions, no otherwise definition can be given against the intent of the legislature. This Court is also aware of the trite law that a thing should be done in the manner prescribed under the statute, not otherwise. Admittedly, vide order dated 7.7.2025, the learned Special Judge (NIA) has rejected the default bail application of the applicant. Thus, against such order the remedy of appeal is provided under the Special Act, i.e., Act 2008.

15. Further this Court also noticed that the law referred by counsel for the applicant, which is rendered in case of Harendra Vs. State of U.P. and another **(supra)**, is on different factual matrix and this will not apply to the facts and circumstances of the present case as the dispute in question in the above-said case was regarding completion of ninety days as the charge sheet was dispatched on the same day when the application for default bail was moved, therefore, this will not cover the field of the issue in the instant matter.

16. Ergo, this Court is of the considered opinion that the instant application challenging the order dated 7.7.2025 passed by the Special Court (NIA) is not maintainable, thus, preliminary objection taken by counsel for the State; sustains.

17. The present application is hereby **dismissed** as not maintainable.

18. However, it is open to the applicant to pursue the appropriate remedy, provided under law.

19. Consigned to the records.

(2025) 9 ILRA 549
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.09.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Application U/S 482 No. 6702 of 2025

Ajay Pratap Singh Alias Ajai Sipahi ...Applicant

Versus

State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Abhishek Singh, Dharmendra Pratap Singh, Shradha

Counsel for the Opposite Parties:
G.A., Sayyed Farooq Ahmad

Issue for consideration
Legality of impugned order rejecting Application u/s 311 Cr.P.C.

Headnotes

Code of Criminal Procedure-sec 311- Application u/s 311 Cr.P.C. for recall of P.W. 8-Investigation Officer has been declined-P.W.8 was extensively cross examined by the defense-Adequate opportunity- no reason to disagree with the findings of the learned trial court-application u/s 311 Cr.P.C. is a dilatory tactic-no cause for interference. **Application dismissed.** (E-9)

Case Law Cited

1. State (NCT of Delhi) vs. Shiv Kumar Yadav reported at (2016) 2 SCC 402
2. Ratanlal Vs. Prahlad Jat reported at (2017) 9 SCC 340
3. Swapan Kumar Chatterjee vs CBI, reported at (2019) 14 SCC 328
4. V. N. Patil vs. K. Niranjan Kumar, reported at (2021) 3 SCC 661
5. Manju Devi Vs.State of Rajasthan and others reported at 2019 (6) SCC 203

List of Acts

1.Code of Criminal Procedure

List of Keywords

Section 311; Dilatory tactics

Appearances of parties

Counsel for Applicant(s) : Abhishek Singh, Dharmendra Pratap Singh, Shradha
Counsel for Opposite Party(s) : G.A., Sayyed Farooq Ahmad

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

1. Heard Shri Abhishek Singh, learned counsel assisted by Shri Anuj Kumar Gupta, learned counsel for the applicant, Shri Syed Farookh Ahmad, learned counsel for the first informant-opposite party no. 2 and Shri Vivek Gupta, learned AGA for the State.

2. By the impugned order dated 11.06.2024 the application filed by the applicant under Section 311 Cr.P.C. for recall of P.W. 8 Tara Singh Patel who was the investigation officer has been declined.

3. The learned trial court while rejecting the application has first noticed the timeline of the case. As per the impugned order examination in chief of P.W. 8 Tara Singh Patel was conducted on 28.10.2022. The defence did not cross examine the P.W. 8 on the date of examination in chief. Thereafter P.W. 8 was extensively cross examined on 10.02.2023 by the defence. Adequate opportunity to cross examine P.W. 8 was thus provided to the applicant. The defence has also asked all relevant questions in the facts and circumstances of the case to the investigating officer while the latter was under cross examined. After examination of P.W. 8 and all prosecution witnesses the trial proceeded in due course. The conclusion of prosecution evidence set the stage for proceedings under Section 313 Cr.P.C. The proceedings under Section 313 Cr.P.C. too were concluded over a period of time.

4. It is fairly informed by learned counsel for the applicant that three defence witnesses have also been introduced at the stage of defence evidence. After conclusion of the evidence of both sides the matter was posted for hearing. The applicant then moved an application on 06.12.2023 under Section 311 Cr.P.C. to recall P.W. 8 for further cross examination. The trial also adverted to the merits of the case set out in application. On the back of the aforesaid reasoning and factual determination the learned trial court has rejected the application under Section 311 Cr.P.C.

5. The jurisdiction of the trial court under Section 311 Cr.P.C. is wide enough to meet the ends of justice. However, good authority has provided for caution and circumspection while exercising judicial discretion under the said provision.

6. The Supreme Court in **State (NCT of Delhi) vs. Shiv Kumar Yadav** reported at **(2016) 2 SCC 402**, it has been held: -

"Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

7. The Supreme Court in **Ratanlal Vs. Prahlad Jat reported at (2017) 9 SCC 340**, held as under:

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

8. The Supreme Court in **Swapan Kumar Chatterjee vs CBI, reported at (2019) 14 SCC 328**, held thus:

"10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and

circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

9. In **V. N. Patil vs. K. Niranjan Kumar**, reported at **(2021) 3 SCC 661**, the Supreme Court held: -

"14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

17. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

10. Learned counsel for the applicant has relied upon the judgement rendered by the Supreme Court in **Manju Devi Vs.State of Rajasthan and others** reported at **2019 (6) SCC 203**. The facts of the case in which discretion was exercised in favour of the accused while allowing the application under Section 311 Cr.P.C., the Supreme Court in **Manju Devi (supra)** noticed the following facts:

"11. The indisputable fact situation of the case remains that the daughter of the appellant died an unnatural death on 14.01.2010 in Nigeria, where she was living with her husband (the respondent No. 2), who is standing the trial for offences under Section 302, 304B and 498A IPC. The first post-mortem of the dead-body of the daughter of appellant was carried out on 16.01.2010 in Aminu Kanu Teaching Hospital, Nigeria by the said Dr. I. Yusuf. A copy of the post-mortem report prepared by the said doctor in Nigeria has, of course, been placed on record wherein, the cause of death is stated as "asphyxia secondary to strangulation". Though the dead-body of the daughter of appellant was brought to India on 29.01.2010 and Medical Board was constituted for conducting the post-mortem but then, the Board found that no definite opinion could be given regarding the time and cause of death. The investigating agency, for the reasons best known to it, did not cite the said doctor, who conducted the first post-mortem in Nigeria as a witness. It is also not the case on behalf of the accused that the copy of the post-mortem report dated 16.01.2010 prepared in Nigeria was not disputed and/or he would not be seeking to cross-examine the said doctor, if he is examined as a witness in this matter. In the given set of facts and circumstances, evident it is that the testimony of the said doctor who conducted the first post-mortem in Nigeria is germane to the questions involved in this matter; and for a just decision of the case with adequate opportunity to both the parties to put forward their case, the application under Section 311CrPC ought to have been allowed.

11. In those facts and circumstances the Supreme Court in **Manju Devi (supra)**

held that the age of a case should not be the determinative factor in such matters and in any case length of the trial per se should not come in the way of examination of material witness by holding:

"12. Though it is expected that the trial of a sessions case should proceed with reasonable expedition and pendency of such a matter for about 8-9 years is not desirable but then, the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness."

12. As noticed above in **Manju Devi (supra)** the material witness namely Doctor who had conducted the postmortem report was waived as a prosecution witness and not produced before the court. The testimony of the said witness was likely to have a significant impact on the trial. The facts of this case are distinguishable and **Manju Devi (supra)** does not support the case of the applicant.

13. On the contrary as noticed by the learned trial court in this case the defence had ample opportunity to cross examine P.W. 8. The defence has also fully availed the said opportunity and conducted a comprehensive cross examination. The applicant had been afforded all opportunities and the trial was processed in a fair manner.

14. In this wake failure to file an application in a reasonable period of time would be a relevant factor in deciding the fate of the application under Section 311 Cr.P.C. Consequently the said delay in tendering the application under Section 311 Cr.P.C. would have a material bearing on its fate.

15. The need for recall of P.W. 8 for further cross examination will now be assessed on merits. The application under Section 311 Cr.P.C. seeks to cross examine the investigating officer on various aspects of forensic science laboratory report which was always in the record and in the knowledge of the applicant and his counsel. The question as regards the inspection of the spot of the incident by the investigating officer which is depicted in the application under Section 311 Cr.P.C. is an exercise in futility since the question related to the aforesaid inspection was pointedly asked to PW 8. This question only fortifies the findings of the learned trial court that the application under Section 311 CrP.C. is a dilatory tactic of the applicant to delay the process of law.

16. This Court has no reason to disagree with the findings of the learned trial court that all relevant questions in the facts and circumstances of the case have already been posed to P.W. 8 when the said witness was under cross examination.

16. In wake of the preceding discussion there is no cause for interference in the order impugned passed by the learned trial court.

17. The Application U/S 482 is accordingly dismissed.

18. Interim order stands vacated.

19. A copy of this order to be communicated to the learned trial court.

20. The learned trial court shall forthwith proceed in accordance with law after giving an opportunity to the applicant

to make his final arguments (through his counsel). In case the applicant or his counsel impedes the trial or adopts dilatory tactics the learned trial court shall record a finding to this effect and proceed in accordance with law.

(2025) 9 ILRA 554
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.09.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Application U/S 528 BNSS No. 10806 of 2025

Ajay Rai ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Praveen Kumar Singh, Syed Imran Ibrahim

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Effect of wrong cognizance by the Court upon the chargesheet; legality of impugned cognizance and summoning order and chargesheet.

Headnotes

Indian Penal Code-sec 188; Code of Criminal proceeding- court concerned took the cognizance and issued summons on the police report u/s 173(2) Cr.P.C.- Court can not take cognizance for an offence u/s 188 IPC on the police report u/s 173(2) Cr.P.C.- except on the complaint in writing made by the public servant- therefore impugned cognizance and summoning order and proceedings are bad -cognizable offence and therefore it cannot be held that investigation of the case was bad-on the basis of evidence collected by the Investigating Officer-no offence punishable u/s 188 IPC is made out against the applicant –charge sheet can very well be quashed on this ground. **Application allowed.**

Held, considering the facts of the present case it is apparent that on the basis of evidence collected by the Investigating Officer, no offence punishable under section 188 IPC is made out against the applicant and though charge sheet of the present case cannot be quashed on the ground that cognizance was barred by virtue of section
195(1)(a)(i) Cr.P.C. but on this ground charge sheet can very well be quashed. Law is settled, if evidence collected during investigation does not disclose alleged offence then charge sheet can be quashed (See: State of Haryana and others Vs. Bhajan Lal and others 1992 Supp (1) SCC 335). **(para 30)** (E-9)

Case Law Cited

1. State of Maharashtra and another Vs. Sayyed Hassan Sayyed Subhan and others (2019) 18 SCC 145
2. State of Haryana and others Vs. Bhajan Lal and others 1992 Supp (1) SCC 335

List of Acts

1.Indian Penal Code
2. Code of Criminal Proceeding

List of Keywords

Sec. 173(2) Cr.P.C.; section 195(1)(a)(i) Cr.P.C.; cognizance for an offence punishable under section 178 to 188 of the IPC; cognizance on a police report submitted under section 173(2) Cr.P.C.

Appearances of parties

Counsel for Applicant(s) : Praveen Kumar Singh, Syed Imran Ibrahim
Counsel for Opposite Party(s) : G.A.

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

1. Heard Sri Praveen Kumar Singh, learned counsel for the applicant and Sri Manish Goyal, learned AAG assisted by Sri Rupak Chaubey, learned AGA for the State-respondent.

2. The instant application u/s 528 BNSS has been filed by the applicant with

a prayer to quash the summoning order dated 9.9.2019 and the charge sheet dated 7.11.2017 as well as the entire proceedings of case No. 2436 of 2019 (State Vs. Surendra Patel and others) arising out of case crime No. 193 of 2017 u/s 188 IPC, Police Station Kotwali, District Varanasi, pending in the court of Additional Civil Judge (JD)-V/J.M., Varanasi.

Brief facts of the case:-

3. FIR of the present case was lodged on 20.9.2017 for offence punishable under section 188 IPC against the applicant and ten others and 500 unknown persons and according to the FIR on 20.9.2017 at about 11:50 am applicant and other accused were agitating against the government and they in spite of the restrictions laid the procession and therefore, they violated the provisions of section 144 Cr.P.C. and thus committed offence under section 188 IPC.

4. After registration of the FIR investigation was commenced and after investigation charge sheet has been filed against the applicant and others on 7.11.2017 under section 188 IPC and after submission of charge sheet court concerned took the cognizance on 9.9.2019 and issued summons.

5. Hence, the instant application.

Argument advanced on behalf of the applicant:-

6. Learned counsel for the applicant submitted that only due to political vendetta, applicant has been roped in the present case alongwith others on the basis of false allegations.

7. He further submitted, applicants and others carried out a peaceful procession and merely by doing so it can not be said that they committed offence under section 188 IPC.

8. He further submitted that mere violation of section 144 Cr.P.C does not attract the provisions of section 188 IPC and for offence punishable under section 188 IPC it is also necessary that the alleged disobedience committed by an accused must cause or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed.

9. He further submitted that from the evidence collected by the Investigating Officer during investigation, it could not be reflected that either applicant or any other accused caused or tended to cause any obstruction or injury to any person lawfully employed but inspite of that charge sheet under section 188 IPC has been filed against the applicant and court concerned also took the cognizance and issued summons on 9.9.2019.

10. He further submitted that even as per section 195(1)(a)(i) Cr.P.C., no court shall take cognizance for an offence punishable under section 178 to 188 (both inclusive) of the IPC except on the complaint in writing made by a public servant concerned and therefore, cognizance and summoning order dated 9.9.2019 is illegal as in the present matter admittedly court concerned took the cognizance for offence under section 188 IPC on the police report submitted u/s 173(2) Cr.P.C.

11. He further submitted that therefore, considering the facts and

circumstances of the case argued above, cognizance and summoning order dated 9.9.2019 as well as charge sheet filed against the applicant dated 7.11.2017 and entire proceeding pending against the applicant are bad and are liable to be quashed.

Argument advanced on behalf of the State:-

12. Per contra, learned Additional Advocate General submitted that no doubt by virtue of section 195(1)(a)(i) Cr.P.C. no Court can take cognizance on a police report submitted under section 173(2) Cr.P.C. for offence under section 188 IPC and Court can take cognizance for offence under section 188 IPC only on written complaint made by public servant concerned and therefore, cognizance and summonig order dated 9.9.2019 appears to be illegal but he further submitted that the charge sheet filed against the applicant and others on 7.11.2017 cannot be said to be illegal and therefore, same should not be quashed.

13. He further submitted that offence under section 188 IPC is cognizable offence and therefore, neither lodgement of the FIR nor investigation with regard to the offence under section 188 IPC is barred and therefore, if after registration of the FIR under section 188 IPC, investigation has been conducted then it cannot be said that entire investigation is bad including charge sheet.

14. He further submitted that investigation of a case and taking cognizance are two entirely different matters and even if cognizance is barred then also it cannot be said that investigation was also barred.

15. He further submitted that in the present matter, however, considering the provisions of Section 195 (1)(a)(i) Cr.P.C. charge sheet should not be forwarded to the court concerned and instead of forwarding the charge sheet to the court public servant concerned should file written complaint on the basis of investigation conducted by the Investigating Officer but merely due to this reason chargesheet cannot be said to be bad.

16. He further submitted that if charge sheet of the present case prepared by the Investigating Officer after the investigation is quashed then entire material collected by Investigating Officer during investigation will also be automatically quashed and thereafter, there will be no material before the public servant concerned to file written complaint against the applicant as required under section 195(1)(a)(i) Cr.P.C.

17. He further submitted that however charge sheet of the present case can be quashed if from the material collected during investigation no offence under section 188 IPC is made out against the applicant but from the FIR and statements of the witnesses recorded during investigation including the statement of the informant it is apparent that applicant and others, in spite of request made by police officers, continued to make agitation against the government and laid the procession and therefore, violated the provisions of section 144 Cr.P.C. and it cannot be said that their disobedience did not cause any annoyance or obstruction to public servant and therefore, from this angle too charge sheet cannot be quashed. He placed reliance on the judgement of Apex Court passed in case of **State of Maharashtra and another Vs. Sayyed Hassan Sayyed Subhan and others (2019) 18 SCC 145.**

18. He further submitted that therefore, considering the provisions of section 195 (1)(a)(i) Cr.P.C. this Court, however, may quash the cognizance and summoning order dated 9.9.2019 but charge sheet filed against the applicant should not be quashed and if State wants then on the basis of investigation conducted by the Investigating Officer public servant can file written complaint against the applicant and court concerned can took cognizance, in accordance with law.

Analysis:-

19. I have heard learned counsel for both the parties and perused the record of the case.

20. From perusal of the record it reflects that charge sheet has been filed against the applicant for offence under section 188 IPC and thereafter court concerned took the cognizance and issued summons on 9.9.2019 on the police report submitted under section 173(2) Cr.P.C. therefore, it is apparent that cognizance has been taken by the court concerned on the police report and not on the written complaint filed by the public servant.

21. As per section 195(1)(a)(i) Cr.P.C., no court shall take cognizance of any offence punishable under sections 172 to 188 (both inclusive) of the IPC except on the complaint in writing made by the public servant concerned or of some other public servant to whom he is administratively subordinate, therefore, from perusal of the statutory provisions of law, it is crystal clear that a Court can not take cognizance for an offence under section 188 IPC on the police report submitted under section 173(2) Cr.P.C. therefore, cognizance and summoning order dated 9.9.2019 and proceedings pending against applicant before the court concerned are bad in the eyes of law.

22. Further, however, as offence punishable under section 188 IPC is cognizable offence and therefore, it cannot be held that investigation of the case was bad. Further investigation of the case and taking cognizance are two different matters and even if cognizance is barred then also it cannot be said that investigation was also barred and therefore, it cannot be said that as on the charge sheet cognizance can not taken, therefore, charge sheet is also bad.

23. This Court finds merit in the submission advanced by learned AAG that if charge sheet of the present case has been quashed then entire material collected by investigating officer will also be quashed and therefore, no material will be available before the public servant to file complaint as required under section 195(1)(a)(i) Cr.P.C., therefore, from this angle too charge sheet of the present case cannot be quashed on the ground that cognizance was barred.

24. Now, it is to analyze whether charge sheet filed against applicant can be quashed on the ground that from the material collected by investigating officer during investigation no offence under section 188 IPC is made out. To analyze the same it will apposite to go through section 188 IPC which runs as under:-

"188. Disobedience to order duly promulgated by public servant-

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with

certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section."

25. From perusal of section 188 IPC it reflects following are its essential ingredients:-

(i) Knowledge of the order promulgated by a public servant directing the accused to abstain from certain act;

(ii) Disobedience of such order by the accused in such manner it causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed and

(iii) If such disobedience causes or tends to cause danger to human life, health or safety or cause or tends to cause a riot or affray.

26. Therefore, from the essential ingredients of section 188 IPC it reflects, mere disobedience of the order promulgated by a public servant is not sufficient to attract the provisions of Section 188 IPC and for an offence under section 188 IPC it is necessary that the offender must cause or tend to cause obstruction annoyance or injury or risk of obstruction annoyance or injury to any person lawfully employed or such disobedience causes or tends to cause danger to human life, health or safety or cause or tend to cause riot or affray and it is also necessary that the offender must had the knowledge of restriction order promulgated by a public servant.

27. In case at hand, it is not the case of applicant that he was not having knowledge of the restriction order passed by public servant under section 144 Cr.P.C., therefore, first ingredient of section 188 IPC has been fulfilled.

28. Further, as far as ingredient Nos. 2 and 3 of section 188 IPC are concerned, from the record, it reflects applicant and others carried out a peaceful procession and from the entire evidence available on record collected during investigation by the Investigating Officer it could not be reflected that by disobeying the restrictive order promulgated under section 144 Cr.P.C. applicant caused or tended to cause

obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed and it also could not be reflected that such disobedience caused or tended to cause danger to human life, health or safety or caused or tends to cause riot or affray, therefore, prima facie, it reflects, essential ingredient Nos. 2 and 3 of Section 188 IPC are not fulfilled and therefore, offence punishable under section 188 IPC is not made out against applicant.

29. Further, however, learned AAG placed reliance on the judgement of the Apex Court passed in case of **Sayyed Hassan (supra)** but facts of that case were distinguishable from the facts of present case. In that case prohibitory order was passed by Commissioner Food and Safety and therefore, Apex Court after considering the third ingredient of Section 188 IPC held that disobedience of such order attracts the provision of Section 188 IPC. 30. Therefore, considering the facts of the present case it is apparent that on the basis of evidence collected by the Investigating Officer, no offence punishable under section 188 IPC is made out against the applicant and though charge sheet of the present case cannot be quashed on the ground that cognizance was barred by virtue of section 195(1)(a)(i) Cr.P.C. but on this ground charge sheet can very well be quashed. Law is settled, if evidence collected during investigation does not disclose alleged offence then charge sheet can be quashed **(See: State of Haryana and others Vs. Bhajan Lal and others 1992 Supp (1) SCC 335).**

31. Therefore, from the discussion made above, in my view, cognizance and summoning order dated 9.9.2019 as well as charge sheet filed against the applicant and proceeding pending against the applicant are bad and are liable to be **quashed**.

32. Accordingly, the cognizance and summoning order dated 9.9.2019, chargesheet filed against the applicant and proceeding pending against him are, hereby, quashed. 33. The instant application u/s 528 BNSS stands **allowed**.

(2025) 9 ILRA 559
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.09.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482 No. 15400 of 2018

Shivam & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Mahipal Singh

Counsel for the Opposite Parties:
G.A., Rajesh Kumar Pandey

Issue for consideration
Matters pertain to quashing the impugned charge sheet

Headnotes
Indian Penal Code-sec 406-Applicant nos.1 and 3 are the real brothers- Applicant nos.2 and 4 are mother and father of Applicant nos.1 and 3-sale deed contains a general stipulation -any loan against the property in question would be paid by the purchaser-loan amount against the property in question have been paid to the bank and no dues certificate has been issued-no entrustment of the property by the informant to the Applicants- ownership was transferred by sale transaction-any condition of sale contract is violated by any party to the contract-the liability would be a civil liability and no offence under

Section 406 I.P.C. would be attracted. **Application allowed.** (E-9)

Case Law Cited

1. State of Gujarat Vs. Jaswantlal Nathalal, AIR 1968 SC 700

List of Acts

Indian Penal Code

List of Keywords

Civil liability; Section 406 I.P.C.

Appearances of parties

Counsel for Applicant :- Mahipal Singh
Counsel for Opposite Party :- G.A.,Rajesh Kumar Pandey

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard learned counsel for the Applicants and learned A.G.A. for the State. No one appears on behalf of Opposite party no.2.

2. By order dated 18.4.2024, Opposite party no.2 was proceeded ex-parte. On 29.7.2025 also no one appeared on behalf of opposite party no.2.

3. This application under Section 482 Cr.P.C. is preferred by Applicants for quashing the impugned charge sheet dated 3.6.2017 in Criminal Case No.1702 of 2017, State Vs. Shivam and others, arising out of Case Crime No.107 of 2017, under Sections 406, 120-B I.P.C., Police Station Badhapur, District Bijnor.

4. It is submitted by learned counsel for Applicants that Applicant nos.1 and 3 are the real brothers. Applicant nos.2 and 4 are mother and father of Applicant nos.1 and 3. On 4.3.2017, present first information report was lodged by Opposite party no.2 against Applicants. It is alleged in first information report that informant Manju Tyagi and Manish Tyagi executed a sale deed in favour of Shivam Agarwal (Applicant no.1) on 6.4.2015 of agricultural land area 3.618 hectare situated at Mauja Bhajrawala Jagir, Pargana Badhapur, District-Bijnor including liability of agricultural debt. Shivam Agarwal and his father Hari Om Agarwal assured to pay the bank loan. On the same day i.e. 6.4.2015 his sister Monika Tyagi also executed a sale deed in favour of Smt. Rashmi Agarwal of agricultural land, area 1.070 hectare situated at Mauja Ramdas Bairagai, Pargana Badhapur, District Bijnor including liability of agricultural loan upon the said land. Rashmi Agarwal, her husband Hari Om Agarwal and their son Lavi Agarwal assured to pay the aforesaid bank loan. The loan amount was Rs.9,65,000/- from Punjab National Bank, Badhapur. It is alleged that they have not paid the aforesaid loan amount.

5. Investigating Officer investigated the matter and has recorded the statement of the informant and witnesses of the fact, namely, Smt. Manju Tyagi-informant and witnesses Smt. Manisha Tyagi, Smt. Monika Tyagi, Mohit Tyagi and Satendra Tyagi under Section 161 Cr.P.C. Thereafter, the Investigating Officer submitted charge sheet against Applicants under Sections 406, 120-B I.P.C. on 3.6.2017.

6. Learned counsel for Applicants submits that the father of opposite party no.2 and Monika Tyagi was posted as Sub-Inspector at Police Station-Kotwali, Najibabad, Bijnor in the year 2015. Applicants are businessmen and they are carrying business at Najibabad, Bijnor. The father of opposite party no.2 stated to Applicant no.1 to sell abovenoted

agricultural land. He concealed the fact of loan amount, taken upon the said agricultural land. The Applicant no.1 trusted upon the father of opposite party no.2 and gave Rs.10 lacs as advance amount for purchasing the aforesaid agricultural land. Thereafter, the Applicant no.1 made a query from the revenue department and found that there is agricultural loan of Punjab National Bank upon the said agricultural land. The Applicant nos.1 and 3 requested to return the advance amount of Rs.10 lacs due to agricultural loan upon the aforesaid land. But the father of the opposite party no.2 denied to return the aforesaid advance amount.

7. It is further submitted by learned counsel for the Applicants that thereafter, Applicant no.1 had to compromise and got executed sale deed in his favour, executed by opposite party no.2 and her sister Manisha Tyagi and another sale deed in favour of his mother Smt. Rashmi Agarwal executed by another daughter of opposite party no.2-Monika Tyagi on 6.4.2015. It is true that the Applicant no.1 assured to pay the said loan amount as mentioned in the sale deed, but Applicants did not state to pay the said loan amount within specific period. The opposite party no.2 and his sister Monika Tyagi did not pay any amount in respect of aforesaid loan since 2013 till the execution of sale deed dated 6.4.2015. While the said loan was taken in the year 2013 as Rs.2,33,000/- in one account and Rs.2,33,000/- in another account and Rs.1,86,000/- in the third account. The total amount was Rs.6,52,000/- in the year 2013 and which at present was Rs.13,16,000/-.

8. It is further stated that Applicant nos.3 and 4 are neither the party of both the sale deeds nor they are witnesses of said sale deeds. They have no concern with the aforesaid sale deeds. They are falsely implicated in this present case due to their relation being the family. Applicant no.1 as well as Applicant no.2 did not deny to pay the said loan amount. Till the payment of loan amount the said land purchased by them cannot be free and without payment of loan their names cannot be recorded in the revenue record. The aforesaid Applicants are having possession of aforesaid land since the date of sale deed, but due to the aforesaid loan amount their name could not be entered in revenue records.

9. Applicant nos.1 and 2 were ready to pay the said loan amount.Applicant no.1 went to Punjab National Bank, Badhapur and gave an Application on 10.3.2017 to Manager, Punjab National Bank, Badhapur requesting to provide statement of account for payment of said amount. It is relevant to state here that the Manager returned the said application on ground that the said account has become NPA (Non Performing Asset) and after taking instruction regarding the loan amount, loan may be adjusted under the scheme of One Time Settlement (OTS). So the Applicant no.1 and 2 were trying to pay the said loan amount after OTS Scheme.

10. Thereafter, the bank concern made correspondence with the Applicants and settled the loan amount under the OTS scheme with the Applicant nos.1 and 2. In respect of OTS scheme the Applicant nos.1 and 2 deposited token amount in all three loan accounts (1) A/c No.059200ae00001229 in the name of Monika Tyagi (2) A/c No.059200ae00001210 in the name of Manju Tyagi Rs.1,00,000/- (3) A/c

No.059200ae00001238 in the name of Manisha Tyagi Rs.1,00,000/- on 17.11.2017. The bank concern received the said amount and issued receipt of the same to Applicant nos.1 and 2 as token amount. After settlement under the OTS scheme the Applicant nos.1 and 2 paid rest amount Rs.1,18,000/- by cheque. The said amount was debited from the account of Shubham Agarwal and credited in the account of Monika Tyagi on 6.1.2018.

11. Thereafter, the Applicant nos.1 and 2 deposited rest amount under the OTS scheme in pursuance of settled amount Rs.4,58,000/-. The bank concern issued no dues certificate on 17.1.2018 in the name of Manju Tyagi, Manisha Tyagi and Monika Tyagi separately by closing the loan account under OTS scheme. Bank concern executed reconveryance deed on 20.1.2018 and released the mortgage land. Applicant nos.1 and 2 deposited the token amount of Rs.2,10,000/- in all three loan account on 17.11.2017 under the OTS scheme and after clearing the loan amount, the bank concern issued no dues certificae on 17.1.2018 after closing the loan account of 15.1.2018.

12. Learned A.G.A. has opposed this application and submits that the charge sheet has been rightly submitted and the applicants have been summoned in accordance with law. The applicants have not deposited the loan amount as per the agreement and as such the present application is liable to be dismissed.

13. Initially, a first information report dated 4.3.2017 was lodged at Police Station-Badhapur, District-Bijnor, under Sections 420, 406 I.P.C. against the Applicants-accused. The first information report was lodged by one Manju Tyagi. As per the allegations in the first information, it is alleged by the informant that on 6.4.2015 the informant Manju Tyagi and Manish Tyagi sold their agricultural land to Shivam Agarwal-accused. At the time of the aforesaid sale of the land, there was agricultural loan against the aforesaid land and the accused Shivam Agarwal & his father Hariom Agarwal had assured the sellers that they would deposit the loan amount with the bank and aforesaid fact was also recorded in the sale deed. On the same day i.e. 6.4.2015 the sister of the informant, namely, Monika Tyagi has also executed sale deed of their agricultural land in favour of accused-Rashmi Agarwal and, on the aforesaid land, also there was agricultural loan which was assured to be deposited by Rashmi Agarwal, Hariom Agarwal and Lavi Agarwal and the recital in respect of the same was also recorded in the sale deed. Subsequently, the informant receives notice from the bank for Rs 9,65,000/-. On repeated requests, the accused persons have not deposited the amount due with the bank. The accused persons are utilising the aforesaid amount in the business.

14. In pursuance to the above-mentioned first information report, the Investigating Officer has recorded the statement of informant-Manju Tyagi, Manisha Tyagi, Monika Tyagi, Mohit Tyagi, Satyendra Tyagi, who have supported the prosecution case. Thereafter, the Investigating Officer submitted chargesheet dated 3.6.2017 under Section 406 I.P.C. read with Section 120B I.P.C. The court concerned, thereafter, has taken cognizance on 8.11.2017.

15. The sale deed of land in question has been executed by Manisha Tyagi in favour of Shivam Agarwal on 6.4.2015.

The aforesaid sale deed contains a recital that on debt/loan on the land in question would be paid by the purchaser. Similarly, on 6.4.2015 sale deed has been executed by Monika Tyagi in favour of Smt. Rashmi Agarwal. The aforesaid sale deed also contained a recital that debt/loan on the land in question would be paid by the purchaser.

16. The Applicants case is to the effect that the Applicant nos.1 and 2 were ready to pay the loan amount and, in this respect, went to the Punjab National Bank and applied on 10.3.2017 to the Manager of the Punjab National Bank for providing the statement of account for payment of the loan amount in question. The Manager concerned returned the aforesaid application informing that the account has become NPA (Non Performing Asset) and only after seeking instruction regarding the loan amount, the loan would be adjusted under the One Time Settlement (OTS) scheme of Bank. It is also stated by the Applicants that the Applicants repaid the loan amount in question under the OTS scheme of bank and a reconveyance deed was executed on 20.1.2018 and the bank concerned has also issued a No Dues Certificate on 17.1.2018 in the name of the sellers by closing the loan account.

17. The Applicants are being proceeded under Sections 406 and 120B of I.P.C. Section 406 of I.P.C. provides punishment for criminal breach of trust. The offence of criminal breach of trust is defined under Section 405 I.P.C. The said section provides whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

18. Under Section 54 of Transfer of Property Act, “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the present case, the ownership of the property in question was transferred in favour of the Applicants by the informant. The sale deeds in question contained a stipulation that in the event of any loan against the property, the purchaser would pay the loan. The expression entrustment of property signifies that the person was handing over the property to another person, the first person continued to be owner of the property in question. The sale of the property does not create any trust between the seller and the purchaser and the sale transaction imports transfer of ownership. The transfer of ownership implies that the purchaser has all the rights in respect of the property in question including the right to enjoy the property as he intends to. It is true that the sale deeds in question contains a stipulation with regard to the payment of the loan against the property by the purchaser of the property. The aforesaid condition in the sale deed was the terms of transfer of liability against the loan in favour of the purchaser and did not create any trust between the seller and the purchaser.

19. In the case of State of **Gujarat Vs. Jaswantlal Nathalal, AIR 1968 SC 700** the supreme court has held as under:-

“8. The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any

dominion over the property" occurring thereafter - see Velji Raghvaji Patel v. State of Maharashtra[(1965) 2 SCR 429] . Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust - see Jaswantrai Manilal Akhaney v. State of Bombay[[1956] SCR 483, 498-500] . The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the Government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust."

20. It is to be noted that the sale deed in question did not provide any stipulation that the loan amount against the property in question was required to be paid by the purchaser-Applicants within a stipulated time period. The sale deed contains a general stipulation that any loan against the property in question would be paid by the purchaser. The Applicants have made a specific case that the loan amount against the property in question have been paid to the bank and no dues certificate has been issued in this respect by the concerned bank. The pleadings in this respect are contained in paragraph 16, 17 and 18 of the affidavit filed in support of this application. The opposite party-State has not denied the aforesaid averments of the Applicants in their counter affidavit.

21. It is further to be seen that the Applicants have repaid the loan amount and has honoured the condition in the sale deed. Even otherwise, there was no entrustment of the property by the informant to the Applicants, in fact the ownership of the property was transferred by sale transaction. In the present case, there is no material or circumstance to demonstrate entrustment of property and in fact the present case is a case of sale transaction. If any condition of sale contract is violated by any party to the contract, the liability would be a civil liability and no offence under Section 406 I.P.C. would be attracted. More particularly, in the circumstances where the loan in question has been repaid by Applicants to bank concerned and the bank concerned has issued a no dues certificate. Further, it has not been shown by opposite parties that the Applicants dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which is made touching the discharge of such trust. Mere inaction in completing the stipulations of contract of sale without disposition of the property would not

constitute an offence under Section 406 of the Indian Penal Code. The transaction alleged or omission on part of Applicant in the present case is founded on the violation of the terms of contract which is civil wrong.

22. In view of the facts and circumstances and reasons stated hereinabove, the present 482 Cr.P.C application is **allowed** and the criminal proceedings including chargesheet dated 3.6.2017 in Criminal Case No. 1702 of 2017 (State Vs Shivam and others) arising out of Case Crime No. 107 of 2017, under Sections 406 and 120B I.P.C, Police Station-Badhapur, District-Bijnor are hereby quashed.

(2025) 9 ILRA 565
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482 No. 16977 of 2023

Rohit Sharma ...Applicant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicants:
Ahmad Saquib Mansoor, Randhir Jain, Sandeep Kumar Keshari

Counsel for the Opposite Parties:
Arunesh Kumar Singh, G.A.

Issue for consideration
Legality of summoning order

Headnotes
Matrimonial dispute-Indian Penal Code-Section 498A-Applicant is brother-in-law of informant- general and omnibus allegations- date of demand of dowry and the manner in which demand for dowry was made is not stated- aforesaid allegations cannot be a ground for summoning the applicant-accused - criminal proceedings quashed. Application allowed. (E-9)

Case Law Cited
1. Viri Singh and another Vs State of U.P. and another – 2025:AHC:147074
2. Achin Gupta Vs State of Haryana, 2024 INSC 369
3. Dara Lakshmi Narayana & Others Vs State of Telangana & Another, 2024 INSC 953
4. Geeta Mehrotra and another Vs State of Uttar Pradesh and another – 2012 (10) SCC 741

List of Acts
1. India Penal Code

List of Keywords
Vague and general allegations; dowry; Section 498A; relative of the husband

Appearances of parties
Counsel for applicant(s) : Ahmad Saquib Mansoor, Randhir Jain, Sandeep Kumar Keshari
Counsel for Respondent(s) : Arunesh Kumar Singh, G.A.

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Randhir Jain and Sri Sandeep Kumar Kesari, learned counsels for the Applicant, Sri Arunesh Kumar Singh, learned counsel for opposite party no.2 and learned A.G.A. for the State.

2. The present application is preferred by Applicant for quashing the chargesheet dated 12/5/2019 under sections 498A, 323, 504, 506 of I.P.C. and under sections 3/4 of Dowary Prohibition Act, 1961, police Station - Chaubeypur, District - Varanasi, as well as, cognizance order dated 25/7/2019 in criminal case no. 999 of 2019 (State Vs Anil Sharma and others) arising out of Case Crime No. 02 of 2019 under sections 498A, 323, 504, 506 I.P.C and

Sections 3/4 of Dowary Prohibition Act pending in the Court of Judicial Magistrate-IIIrd, District Magistrate, Varanasi.

3. The applicant is brother-in-law of informant. Initially, the first information report dated 03.01.2019 was lodged under sections 498A, 323, 504, 506 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act, against Applicant and five other accused persons [(namely - Anil Sharma (Husband), Virendra Sharma (Father in law), Malti Devi (Mother in Law), Amit Sharma (Brother in law), Ishu (Brother in law)], at police Station - Chaubeypur, Varanasi. The first information report was lodged by opposite party no. 2 - Geeta Sharma. The first information report was lodged at Case Crime No.02 of 2019.

4. The prosecution case as per the first information report is to the effect that opposite party no. 2-wife was married to Anil Sharma on 24.04.2013. At the time of marriage, at the tilak ceremony Rs. 50,000/- cash, gold ring, clothes and other items were given and thereafter at the time of marriage further gifts were given. After marriage, informant went to matrimonial home then after one and half months of marriage, husband, father-in-law, mother-in-law and brother-in-law (which included the applicant), started harassing and beating the informant for dowry and demanded Rs. 2 lakhs for establishment of business. The opposite party no. 2 objected to aforesaid demand and stated that the family members of opposite party no. 2 are not in a position to pay Rs. 2 Lacs as demanded by accused persons, as a result of the same, accused persons started beating and harassing opposite party no 2. When the father of informant came to take informant for some days, accused persons have demanded dowry and stated that informant may not be sent back to matrimonial home if the demand for dowry is not fulfilled. The jewellery which was given by father of informant was retained by accused persons and informant was sent back. The father of informant used to send back informant to matrimonial home. Out of the marriage, one son was born who is aged about three years at the time of lodging of first information report, however, all the expenses of aforesaid son are being met out by father of informant. On 05.06.2018, when informant was seven months pregnant, the husband, father-in-law, mother-in-law and brother-in-law and Kishori came and on the enticing of Kishori, accused persons demanded rupees two lakhs as dowry and thereafter have assaulted informant and have thrown her out of matrimonial home along with child and the accused persons have stated that informant may not come back till demand of dowry is met. The accused person have beaten informant and as a result of the same she was admitted in hospital at Varanasi and second child was born dead. Informant is living with her father in her parental home and accused persons had not taken any pain to contact her.

5. The investigating officer thereafter has recorded statement of the informant under section 161 of Code of Criminal Procedure, where informant has stated that marriage of informant with co-accused-Anil Kumar was held on 22.04.2013 in accordance with Hindu Rituals and Rites. In the marriage, father of informant had given 50,000 cash, jewellery and other items. After one and half years of marriage the husband, father-in-law, mother-in-law and three brother-in-law have beaten and harassed the informant for demand of dowry. The accused person were

demanding dowry to the tune of Rs. Two Lacs for purpose of establishment of business. When the parents of informant went to meet the accused persons they have demanded Rs Two Lacs and further stated not to send informant if the demand is not met. All the jewellery were kept by the accused persons and the informant was sent back to her parents home. The parents of informant used to send the informant to the matrimonial home. One son was born out of marriage. In the intervening period when informant was sent back to her matrimonial home, the husband, mother-in-law, father-in-law and brother-in-law used to assault the informant and have thrown her out of matrimonial home and stated to informant not to come back without the amount demanded.

6. Thereafter, statement of mother of informant namely Shanti Sharma was recorded by investigating officer, who has stated that Geeta Sharma is my daughter and she was married with great pomp and show with Anil Sharma by giving 50,000 cash and jewellery. Initially, everything was good but after few days my daughter's husband, mother-in-law, father-in-law and brother-in-law started demanding Rs. Two Lacs as dowry. When it was informed that they do not have the money then the accused persons have beaten my daughter (informant) abused her and thrown her out of matrimonial home and further stated that if the amount of Rs. four lakh is not given then they will kill her. The accused persons have harassed the informant for dowry.

7. The investigating officer has further recorded the statement of father of informant namely-Chauthi Sharma who has stated that marriage of his daughter was held with great pomp and show by giving 50,000 cash as Tilak and some jewellery. Things were fine for some time after marriage but after few days, husband, mother-in-law, father-in-law and three brother-in-law started demanding rupees Rs. two lacs as dowary and started harassing informant. We tried to convince accused persons and sent informant to matrimonial home, however, accused persons used to pressurise informant to bring Rs. two lacs as dowry, further accused persons used to harass informant and beat her, abuse her and threatened for life.

8. The investigating officer thereafter submitted charge-sheet dated 03.01.2019 against accused persons including the applicant under section 498A, 323, 504 and 506 of Indian penal code and section 3/4 of Dowry Prohibition Act, 1961. The court concerned thereafter has taken cognizance on 25.07.2019.

9. It is submitted by learned counsel for applicant that applicant is brother-in-law and is residing in Prayagraj city for preparation of competitive examination. It is further submitted that allegations in first information report and statement recorded by investigating officer, in respect of applicant, are wholly vague in nature and lacks specification. It is further submitted that applicant has never demanded any dowry nor has harassed opposite party no.2 for non-fullfillment of dowry.

10. It is submitted by learned counsel for opposite party no. 2- informant that the informant lodged the first information report against the accused persons including applicant and thereafter investigating officer has investigated the case and recorded the statement under section 161 of Cr.P.C. and found accused person to be offender. The accused persons

including applicant have committed assault and have harassed informant and demanded dowry as such investigating officer has rightly submitted chargesheet and the court concerned has taken cognizance in accordance with law.

11. Learned AGA on behalf of opposite party no.1 submitted that chargesheet has been submitted against applicant in accordance with law and the court concerned has taken cognizance of offence. It is further submitted that applicant was found to have demanded dowry and subjected informant to harassment and assault. The court concerned has in accordance with law taken cognizance of offence. The present 482 Cr.P.C application is liable to be dismissed.

12. In the present case, applicant (who is brother-in-law of informant), is also prosecuted under Section 498-A of Indian Penal Code and Section 3/4 of Dowry Prohibition Act. Section 498A of Indian Penal Code provides penal consequences where husband or relative of husband subjects such woman to cruelty. The cruelty has been defined in the explanation appended to Section 498A of Indian Penal Code. There are two explanations provided under aforesaid provision for interpretation of word "cruelty" provided under aforesaid section. The explanation (a) provides that "cruelty" would mean any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The explanation (b) provides cruelty would mean harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure of her or any person related to her to meet such demand. The provisions of Section 498A of Indian Penal Code prescribes as under :

"498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

13. In the present case, there is no allegation that the applicant has offered any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of woman. The counsel for opposite parties has neither relied upon any grave injury suffered by opposite party no. 2 nor has relied upon any medical report in this respect. It is not in dispute between the parties that no medical practitioner was examined in support of FIR before the court concerned. It is not alleged in the FIR nor any material circumstances have been shown on behalf of opposite parties that the conduct of applicant was of such a nature as is likely to drive the wife to commit suicide.

14. As per prosecution case, it is alleged that the wife was being subjected to harassment by accused person and

demanding amount to meet unlawful demand. For the purpose of prosecution under Section 498A of Indian Penal Code, it is imperative that the woman should be subjected to cruelty by the husband or relative of the husband of a woman. As per explanation (b) of the aforesaid section, it is imperative that the harassment of woman should be with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to the woman to meet such demand.

15. A perusal of First Information Report would go to show that general and omnibus allegations are made against the applicant with regard to demand of dowry. Although in first information report, it has been stated that accused persons were demanding dowry of Rs. two lacs, however, neither the date nor time of alleged demand has been disclosed in the FIR. The statement of informant also does not disclose the details of harassment which has been incurred by applicant to the wife-informant in respect of demand for dowry.

16. This Court in **Viri Singh and another Vs State of U.P. and another - 2025:AHC:147074** in the context of vague and general allegations in a criminal case, has observed as under :-

"24. Criminal law is set in motion by lodging of First Information Report or Complaint. The investigation/prosecution is carried upon to find the truth in allegations. Setting in motion criminal law entails consequences including curtailing of liberty of individual. The criminal law machinery is based on the nature of allegations and the evidence found during investigation/ prosecution/ enquiry. It is important for prosecution to provide precise details of allegations and evidence to support the prosecution case.

25. Vague, ambiguous and omnibus allegations can violate the right of accused to process of law and fair trial. It is fundamental principle of law that accused be subjected to fair trial. Vague allegation has significant effect on defence by creating uncertainty. Without specific details and evidence, the defence of accused may be prejudiced or the accused may not be able to effectively defend himself.

26. Vague allegation can affect the defence of accused by making it difficult to formulate a targeted defence strategy. Without clear specifics or evidence to address, accused may struggle to refute the allegations or present a compelling counter argument. Lawyers/Advocates typically rely on specific information to prepare their case, such as dates, time, location, and witnesses. Vague allegations lack these crucial details, leaving the defence to speculate or generalize their response, which can weaken their defence in court. The mere suggestion of wrong doing, without substantiation, can lead to stigma and prejudice against the accused, making it harder for them to receive a fair trial. Moreover, vague allegations may prolong legal proceedings as the defence attempts to gather more information to understand the accusations fully."

17. In **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89** the Supreme Court has laid emphasis that the complaint must contain material to enable the court to make up mind for issuing process.

"5. Section 203 of the Code empowers a Magistrate to dismiss a

complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

18. The question therefore arises what is the material which is required to be before the court to issue process under criminal law. The material facts and particulars to constitute an offence are required to be shown by prosecution before the court proceeds to issue the process. The material facts and particulars are those facts which essentially would be required to constitute an offence. These facts would also include such facts which the law recognises as important facts for proceeding with the trial of the case. These facts are also necessary to bring fairness in the process of trial. In this respect, Sections 212 and 213 of Cr.P.C. (Section 235 & 236 of BNSS) also recognises that the charge shall contain particulars of time & place of offence and the particulars or the manner in which the alleged offence was committed. The rule of law requires that accused is visited with specific allegations in criminal prosecution. Specific allegations under criminal law would require that date, time and place of alleged offence is specified (more particularly when the complainant is the victim having personal knowledge), the details of person against whom the offence is committed or the thing in respect of which the offence was committed. The allegations should also describe the manner in which the offence is committed. In **Neelu Chopra v. Bharti, (2009) 10 SCC 184** the Hon'ble Supreme Court has emphasised the need for specific and proper allegation in criminal law. In this reference para-9 of the Neelu Chopra Judgement (Supra) is quoted herein below :

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."

19. In **Achin Gupta Vs State of Haryana, 2024 INSC 369**, the Supreme

Court has laid emphasis that general and sweeping allegation without specific instance is an abuse of process of Court. In this reference para-25 of the Achin Gupta (Supra) is quoted herebelow :

"25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute"

20. In **Dara Lakshmi Narayana & Others Vs State of Telangana & Another, 2024 INSC 953**, the Supreme Court has observed that vague allegation may lead to misuse of legal process. In this respect, para 18 & 28 is quoted herein below:

"18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

28. The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them."

21. In **Geeta Mehrotra and another Vs State of Uttar Pradesh and another - 2012 (10) SCC 741**, the Supreme Court has held that where the contents of the first information report do not disclose specific allegations against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure and as a result of same criminal proceedings against brother-in-law and sister-in-law were quashed in the said case.

22. A bare perusal of First Information Report and statement of opposite party no. 2 would go to show that general, vague and omnibus allegations are made against applicant. It has not been disclosed in first information report or in statement of

opposite party no.2 as to the role assigned to applicant. Even the date of demand of dowry and the manner in which demand for dowry was made, is not stated. In the statement of opposite party no.2, general and vague allegations with regard to demand of dowry are made against the applicant, who is brother-in-law. In view of aforesaid, general, vague and omnibus allegations have been made against applicants, (who is family members of husband) as such, the aforesaid allegations cannot be a ground for summoning the applicant-accused under Sections 498A of Indian Penal Code and Section 3/4 of Dowry Prohibition Act.

23. The Applicant is also summoned under Sections 504 and 506 of Indian Penal Code. The offence under Section 504 of Indian Penal Code prescribes that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The offence under Section 504 I.P.C. requires that there should be intentional insult and thereby giving provocation to any person intending or knowing that such provocation will cause him to break public peace or to commit any offence. In the present case, there are no material circumstances to show that there was any intentional insult which would give provocation to the wife to cause any break of public peace or to commit any offence as such the material ingredient of offence under Section 504 I.P.C. is not made out from the prosecution case. Further, Section 506 provides punishment for offence of criminal intimidation.

24. The offence of criminal intimidation has been prescribed under Section 503 of Indian Penal Code and the same is quoted here in below :-

"503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

25. An act of criminal intimidation would occur when a person threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

26. A perusal of first information report would go to show that there is no allegation of any threatening against applicant. The first information report does not make any specific allegations against applicant with regard to any threatening and using of abusive language. The first information report does not specify as to what was the language used by applicant. Further the date, time and place of

threatening by applicant has also not been disclosed in the complaint. Even otherwise, allegations do not constitute an offence under Sections 504 and 506 of Indian Penal Code against applicant. The court concerned erred in issuing summons against applicant under Sections 504 and 506 of Indian Penal Code.

27. The applicant is also summoned under Sections 323 of Indian Penal Code. Section 323 of Indian Penal Code provides for offence of causing hurt. The 'Hurt' has been defined under Section 319 of I.P.C. as whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The informant has specifically alleged that the accused has assaulted the Informant and have thrown her out of matrimonial home. The statement of complainant before the court concerned alleges general, vague and omnibus allegation against the applicant with regard to assault and there is no allegation in the first information report nor in the statement of informant of causing any body pain, disease or infirmity to informant. The counsel for opposite party no.2 has not relied upon any medical report nor any doctor is shown to have been examined by investigating officer with regard to any bodily pain, disease or infirmity. In view of the aforesaid, the prosecution case does not satisfy the ingredients of offence under Sections 323 IPC read with section 319 IPC. 28. In view of reasons stated herein above, the criminal proceedings against Applicant (namely-Rohit Sharma) including chargesheet dated 12.05.2019 under sections 498A, 323, 504, 506 of the Indian Penal Code and under section 3/4 of Dowary Prohibition Act, 1961, Police Station - Chaubeypur, District - Varanasi as well as cognizance order dated 25.07.2019 in Criminal Case No. 999 of 2019 (State Vs Anil Sharma and others) arising out of Case Crime No. 2 of 2019 under Sections 498A, 323, 504, 506 I.P.C and Section 3/4 of Dowary Prohibition Act pending in the Court of Judicial Magistrate-IIIrd, District Magistrate, Varanasi is hereby quashed in respect of applicant - Rohit Sharma. The present application under Section 482 of Criminal Procedure Code, 1973 is allowed.

(2025) 9 ILRA 573
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Application U/S 528 BNSS No. 28093 of 2025

Braham Singh ...Applicant
Versus
State of U.P. & Anr. ...Opposite Party(s)

Counsel for the Applicant:
Rajrshi Gupta, Sudhanshu Kumar

Counsel for the Opposite Parties:
G.A.

Issue for consideration
Criminal proceedings if accused exonerated from the disciplinary proceeding

Headnotes
Prevention of Corruption Act-13(1)(e), 13(2)- Applicant's income was Rs. 43,71,394.00/- but his expenditure during a certain period was Rs. 10395229.37/- expenditure is disproportionate to his known income-FIR lodged-charge sheet filed-cognizance-impugned-even if an accused has been exonerated in the departmental proceeding- on the basis of same set of charges- criminal prosecution even on same charges cannot be quashed-not the case that prima facie alleged offences are not made out against Applicant-**Application dismissed.** (E-9)

Case Law Cited

1. P.S. Rajya Vs. State of Bihar; 1996 (9) SCC 1
2. Radheshyam Kejriwal Vs. State of West Bengal and another; 2011 (3) SCC 581
3. Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr.; 2020(9) SCC 636
4. Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another (2005) 4 Supreme Court Cases 370
5. Depot Manager A.P. State Road Transport Corporation Vs. Mhd. Yousuf Miya and others; (1997) 2 SCC 699
6. State Bank of India and others Vs. R.B. Sharma; (2004) 7 SCC 27
7. State (NCT of Delhi) Vs. Ajay Kumar Tyagi (2012) (9) SCC 685
8. State of Haryana and others Vs. Bhajan lal 1992 (Supl) (1) SCC 335
9. Puneet Sabharwal and another Vs. CBI; 2024 SCC OnLine SC 324
10. Superintendent of Police (CBI) VS. Deepak Chowdhary and others; (1995) 6 SCC 225

List of Acts

Prevention of Corruption Act

List of Keywords

departmental inqury, same allegations/charges is exonerated, continuation of criminal prosecution, disproportionate income

Appearances of parties

Counsel for Applicant(s) : Rajrshi Gupta, Sudhanshu Kumar;
Counsel for Party(s) : G.A

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

1. Heard Sri Dilip Kumar, learned Senior Counsel assisted by Sri Sudhanshu Kumar, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed by the applicant with a prayer to quash the impugned charge sheet No. 9 of 2023 dated 20.8.2023 as well as the entire proceeding of criminal case No. 52/1652 of 2023-State Vs. Braham Singh (arising out of case crime No. 281/2019, Police Station Kasna, District Gautam Budh Nagar), based on the impugned charge-sheet, presently pending in the Court of Additional District & Sessions Judge/Special Judge, Prevention of Corruption Act, Meerut, under Sections 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988-Amended Act 2018 and the order dated 10.10.2023, passed by Additional District & Sessions Judge/Special Judge, Prevention of Corruption, Meerut by which the learned Special Judge, has taken the cognizance and issued process against the applicant, to face trial, under section 13(1)b read with 13(2) Prevention of Corruption Act 1988 [Amendment Act 2018].

3. At the very outset, learned counsel for the applicant and learned AGA submitted that in the present matter, there is no need to call counter affidavit as entire relevant materials have already been annexed alongwith the instant application and therefore, instant application may be heard and disposed off, finally.

4. In view of the above, with the consent of parties the instant application is being heard and disposed of without calling counter and rejoinder affidavits.

Brief facts of the case:-

5. FIR of the present case was lodged on 30.3.2019 against the applicant under section 13(1)(e), 13(2) Prevention of Corruption Act and according to the FIR, applicant was posted as Assistant Manager, Grade-II, Greater NOIDA, Development Authority and from his known sources during check period his income was Rs. 43,71,394.00/- but his expenditure during

this period was Rs. 10395229.37/- and therefore, his expenditure is disproportionate to his known income and his expenditure was 137.80% higher than his known income.

6. After registration of the FIR investigation was conducted and during investigation Investigating Officer found that Vigilance Inquiry Report on the basis of which FIR was lodged was correct and expenditure of the applicant was in excess of his known source of income during the check period and thereafter he submitted charge sheet against him on 20.8.2023 under section 13(1)(b) r/w 13(1) (2) Prevention of Corruption Act.

7. After submission of charge sheet court concerned took the cognizance and issued summons to the applicant.

8. Hence the instant application.

Submission made on behalf of the applicant:-

9. Learned counsel for the applicant submitted that by way of instant application applicant is challenging the charge sheet filed against him and entire proceeding of the criminal case pending against him solely on the ground that although as per the prosecution expenditure of the applicant was higher than his known source of income during check period but on the basis of the same allegation when departmental inquiry was conducted then in the departmental inquiry he has been exonerated.

10. He further submitted that from the annexure-7 to the affidavit filed in support to the instant application it reflects, when on the basis of the complaint a departmental inquiry was conducted then on 16.5.2018 i.e. well before lodgement of the FIR, applicant has been exonerated. He next submitted that from the inquiry report dated 16.5.2018 it reflects during check period when details of the property of the applicant were verified through the last five years ITR submitted by him then it was not found that income of the applicant and his expenditure were disproportionate.

11. He further submitted that after above inquiry dated 16.5.2018 a second departmental inqury was conducted and on 14.10.2019 General Manager/Inquiry Officer again found that on the basis of ITR of the applicant allegations of disproportionate income levelled against him appears to be incorrect.

12. He further submitted that the above inquiry report dated 14.10.2019 was kept pending in the office of the Deputy Secretary Industrial Development, U.P. Lucknow for two years and thereafter show cause notice was issued to the applicant and ultimately on 25.1.2022 departmental disciplinary proceeding pending against him was concluded and final departmental inquiry report dated 25.1.2022 has been annexed as annexure-15 to the affidavit filed in support of the instant application.

13. He further submitted that even from the final inquiry report dated 25.1.2022 it is apparent that the charges of disproportionate income levelled against the applicant were not found correct, however, Additional Chief Secretary awarded penalty of censure punishment.

14. He further submitted that against the penalty of censure punishment applicant filed claim before State Public Service Tribunal, Lucknow and vide order

dated 17.5.2023 State Public Service Tribunal, Lucknow allowed his claim petition and even quashed the censure punishment awarded to him. He next submitted that therefore, in departmental inqury applicant has been fully exonerated.

15. He next submitted that as allegations against the applicant in the instant matter and allegations against him in the departmental inquiry are same and in the departmental inquiry applicant has already been exonerated therefore, continuation of criminal prosecution on the basis of same allegations is nothing but abuse of the process of law.

16. He further submitted that this issue has come before the Apex Court in several cases and Apex Court in these cases also categorically held that if an accused in the departmental inqury on the basis of same allegations/charges is exonerated then criminal proceeding pending against him on the basis of same allegation/charges cannot be continued.

17. He placed reliance on the following judgements of the Apex Court:-

a. P.S. Rajya Vs. State of Bihar; 1996 (9) SCC 1

b. Radheshyam Kejriwal Vs. State of West Bengal and another; 2011 (3) SCC 581; and

c. Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr.; 2020(9) SCC 636.

18. He next submitted that therefore, charge sheet filed against the applicant in the instant matter and criminal proceeding pending against him is liable to be quashed.

Submission advanced by State:-

19. Per contra, learned AGA opposed the prayer and submitted that in the present case, as from the investigation conducted by the Investigating Officer, prima facie, it appears applicant is dishonest public servant and his expenditures were very high than his known source of income, therefore, by filing the charge sheet against him Investigating Officer did not commit any illegality.

20. He further submitted that after perusing the material annexed alongwith the charge sheet court concerned also took the cognizance and issued summons to the applicant and therefore, it cannot be said that cognizance and summoning order passed by the court concerned is illegal.

21. He further submitted that criminal proceeding pending against the accused cannot be culminated on the ground that in the departmental proceedings he has been exonerated as standard of proof of both the proceedings are entirely different.

22. He further submitted that departmental/ civil proceedings are based on preponderance of probabilities while standard of proof in criminal charges is beyond reasonable doubt which is solely based upon the evidence adduced by the prosecution and therefore, area of both the proceedings are entirely different and both the proceedings do not overlap each other and therefore, exoneration in any of such proceeding does not ipso facto entitles the accused to either exonerate in departmental proceeding or his acquittal in criminal proceeding.

23. He further submitted that law is settled that a criminal prosecution can only be quashed if evidence collected by the investigating officer during investigation

does not disclose alleged offences and in the instant case, from perusal of the charge sheet, prima facie, it appears that charge sheet discloses offences under sections 13(1)(b) r/w 13(2) Prevention of Corruption Act against the applicant and therefore, neither charge sheet nor proceeding pending against the applicant can be quashed.

24. He next submitted that therefore, the instant application filed by the applicant is devoid of merit and it should be dismissed.

Analysis

25. I have heard learned counsel for the parties and perused the record of the case.

26. The sole issue before this Court in the instant application is that if charge sheet and evidence collected by the Investigating Officer during investigation, prima facie, discloses alleged offences against an accused then whether chargesheet filed against him and criminal proceeding pending against him can be quashed on the ground that he has been exonerated in the departmental proceedings on the same set of allegations/charges.

27. The criminal prosecution and departmental proceeding hold two entirely different fields. The departmental proceedings are based on preponderance of probabilities while criminal prosecution is based on evidence produced by the prosecution during trial and standard to prove a criminal charge is proof beyond reasonable doubt and the departmental proceedings relate to conduct of delinquent officer to punish him for his misconduct defined under statutory Rules or Law. Therefore, even if an accused has been exonerated in the department proceeding then also it cannot be said that ipso facto his criminal prosecution on the basis of same charges cannot be continued.

28. The Constitution Bench of the Apex Court in the case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another (2005) 4 Supreme Court Cases 370** although in different context in para-32 observed as:-

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. ***Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein……"***

(Emphasis Supplied)

29. Again three Judges Bench of the Apex Court in case of **Depot Manager A.P. State Road Transport Corporation Vs. Mhd. Yousuf Miya and others; (1997) 2 SCC 699** in para-8 held that:-

"...The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in violation of a duty the offender owes to the society or for breach of which law has

provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service...″

30. Again Apex Court in case of **State Bank of India and others Vs. R.B. Sharma; (2004) 7 SCC 27** in para-8 observed as:-

"...When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position...″

31. The similar issue whether if on same charges, an offender has been exonerated in the departmental inquiry then criminal prosecution pending against him on same charges can be quashed or not has come up before three judges bench of Apex Court in case of **State (NCT of Delhi) Vs. Ajay Kumar Tyagi (2012) (9) SCC 685** and after elaborate discussion Apex Court held that *"it is well settled that the standard of proof in a departmental proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case cannot be rejected on the basis of the evidence in the departmental proceeding″. The Apex Court further observed that* ***"we are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in quashing of the criminal prosecution″.***

(Emphasis Supplied)

32. Learned counsel for the applicant, however, relied upon three judgements of the Apex Court. Firstly, he placed reliance on judgement of Apex Court passed in the case of **P.S. Rajya (supra)**.

33. From perusal of the judgement of the Apex Court passed in the case of **P.S. Rajya (supra)** it reflects that however, Apex Court quashed the proceeding pending against the petitioner and by quashing the same Apex Court also considered the inquiry report but from bare perusal of the judgement of **P.S. Rajya (supra)**, it reflects that under peculiar facts and circumstances of that case, Supreme Court was pleased to quash the proceedings after considering the judgement of the Apex Court passed in the case of **State of Haryana and others Vs. Bhajan lal 1992 (Supl) (1) SCC 335**. Therefore, it reflects, facts of the case of **P.S. Rajya (supra)** were entirely different from the facts of the present case and Supreme Court quashed the proceeding after observing that on the peculiar facts of the case the criminal proceeding initiated against the applicant cannot be pursued. Therefore, no benefit can be extended to the applicant in the present case on the basis of judgement of the Apex Court passed in the case of **P.S. Rajya (supra)**.

34. Second judgement was relied by learned counsel for the applicant is the

judgement of Apex Court passed in the case of **Radheshyam Kejriwal (supra)** which is three judges bench judgement. After perusing the judgement passed in case of **Radheshyam Kejriwal (supra)**, it reflects that said case relates to the provisions of Foreign Exchange Regulation Act, 1973 (in short, "FERA") and in that case prosecution against the appellant was launched under section 56 of FERA and penalty proceeding was initiated under section 51 of FERA and as appellant had already exonerated in the penalty proceeding therefore, Supreme Court quashed the criminal proceeding initiated under section 56 of FERA.

35. From the facts of the case of **Radheshyam Kejriwal (supra)** it reflects that the criminal prosecution for offence under section 56 of FERA was connected with the penalty proceeding initiated under section 51 of FERA and as in penalty proceeding appellant has been exonerated, therefore, Supreme Court opined that continuation of the criminal prosecution is not permissible. Therefore, facts of the case of **Radheshyam Kejriwal (supra)** were also entirely different from the facts of the present case which is a case of disproportionate income.

36. Learned counsel for the applicant also placed reliance upon the judgment of the Apex Court in the case of **Ashoo Surendranath Tewari (supra)**. This judgement is also passed by three judges Bench of the Apex Court. In this case also Apex Court on the basis of the report of Chief Vigilance Commissioner quashed the criminal prosecution pending against the petitioner but this case is also distinguishable on facts. It reflects, in the case of Ashoo Surendranath Tewari (supra) concerned Sanctioning Authority denied the sanction on the ground that there is no evidence to support the prosecution case and considering this fact, Apex Court quashed the criminal prosecution.

37. In case at hand, admittedly, sanctioning authority has already accord sanction against the applicant after perusing the material produced by the investigating agency and therefore, no benefit can be given to the applicant on the basis of the judgement of Ashoo Surendranath Tewari (supra).

38. Recently the same issue has again come up before the Apex Court in the case of **Puneet Sabharwal and another Vs. CBI; 2024 SCC OnLine SC 324** and Apex Court categorically observed that in so far as the submission that where there is exoneration in a civil adjudication criminal proceeding on the same set of facts and circumstances cannot be allowed to continue is concerned, the same is also without merit as far as the present case is concerned. It is pertinent to note that Apex Court in this case also discussed its earlier judgements passed in **Radheshyam Kejriwal and Ashoo Surendranath Tewari (supra)** and distinguished them on facts.

39. The Apex Court in the case of **Superintendent of Police (CBI) VS. Deepak Chowdhary and others; (1995) 6 SCC 225** also held that on the basis of exoneration in the departmental proceeding by disciplinary authority criminal prosecution cannot be quashed and further, held that what is necessary and material is whether the facts collected during investigation would constitute the offence or not.

40. Therefore, from the above authorities it is apparent that even if an

accused has been exonerated in the departmental proceeding on the basis of same set of charges then also ipso facto his criminal prosecution even on same charges cannot be quashed.

41. Further, however, learned counsel for applicant argued only above single point and he did not argue that even from perusal of material collected during investigation no offence is made out against applicant but even from the chargesheet, prima facie, it cannot be said that alleged offences are not made out against applicant.

42. Therefore, from the discussion made above, in view of this Court, the charge-sheet filed against applicant and proceedings of the instant case pending against him can not be quashed.

43. Accordingly, instant application filed by the applicant is devoid of merit and stands **dismissed.**

(2025) 9 ILRA 580
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 31545 of 2024

Praveen Chetri ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Prashant Sharma, Surendra Pratap Singh

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Requirement and relevance of mentioning the caste of a suspect or a group of persons named in an FIR or during a police investigation; legality of criminal proceedings.

Headnotes

Government may prepare a regulated framework to regulate and amend the Central Motor Vehicle Rules (CMVR) -to explicitly ban caste-based slogans and caste identifiers on all private and public vehicles-issue uniform circulars to RTOs and traffic departments across the state -to enforce the removal of caste signage and impose heavy fines -may set up a Monitoring and Reporting Mechanism – allegation- illegal smuggling of liquor across state borders for financial gain- prima-facie case is made out against the applicant - gang leader involved in the smuggling of liquor-Directions to the Government-**Application dismissed.** (E-9)

Case Law Cited

1. Indra Sawhney v. Union of India
2. Ashok Kumar Thakur v. Union of India, 1992 Supp 3 SCC 217 (Para-339)
3. Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1
4. State of Rajasthan v. Gautam s/o Mohanlal, Criminal Appeal No.3168 of 2023 arising out of Special Leave Petition (Crl.) No.11331 of 2019
5. Shama Sharma v. Kishan Kumar, 2024 SCC OnLine SC 88
6. State of Haryana and others v. Ch. Bhajan Lal and others, 1992 SCC (Cri) 426

List of Acts

1. Indian Penal Code
2. Excise Act

Appearances of parties

Counsel for Applicant(s) : Prashant Sharma, Surendra Pratap Singh
Counsel for Opposite Party(s) : G.A.

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

1. Heard Shri Prashant Sharma and Shri Surendra Pratap Singh, learned counsel for the petitioner, Shri Amrit Raj Chaurasiya, learned AGA for the State-respondents, and perused the material on record.

2. The instant application has been filed with the prayer to quash the entire criminal proceedings arising out of Case Crime No.108 of 2023, under Sections 420, 467, 468, 471 IPC read with Section 60/63 Excise Act, registered at P.S. Jaswant Nagar, District Etawah, as well as the impugned summoning/cognizance order dated 19.8.2023 along with charge-sheet dated 21.7.2023.

2.1 In the alternative, it is also prayed that the entire criminal proceedings in the aforesaid case be stayed, failing which the applicant shall suffer irreparable loss and injury.

3. The brief facts of the case are as follows:

3.1 On 29.04.2023, on the instructions of senior officers, the local police team started checking vehicles passing from the Jaunai Farm police post at District Etawah. While checking incoming and outgoing vehicles, a black Scorpio (Registration No.T-1223-JH-7384-D) was stopped, and three people were found sitting in the Scorpio. Upon inquiry, the person sitting in the driver's seat stated his name as Yadram, son of Ratanlal, resident of U-4, New Roshanpura, Najafgarh, Police Station, Najafgarh, District South-West, Delhi, ***caste-Mali****, aged approximately 35 years. During a personal search, a Redmi mobile phone, sky-blue in colour, was recovered from the right pocket of his trousers. The person sitting in the front passenger seat stated his name as Praveen Chhetri, son of Birendra Kumar, resident of House No.RZ 176A, New Dharmapura-1, Kakrola Road, Najafgarh, Police Station Najafgarh, District South-West, Delhi, aged about 29 years,* ***caste- Pahadi Rajput****. Upon personal search, Rs.1,150/- and one Apple mobile phone, light sky-blue in colour, were recovered from the pocket of his trousers. The person sitting in the rear seat stated his name as Deepak Kumar Singh, son of Santosh Kumar Singh, resident of Kulharia, Police Station Karakat (Godari), District Rohtas, State Bihar, aged approximately 29 years, belonging to the* ***caste- Thakur****. Upon personal search, Rs.550/- and an Oppo mobile phone, grey in colour, were recovered from the pocket of his trousers.*

3.2 On searching the Scorpio, 70 bottles of "ROYAL CHALLENGE CLASSIC PREMIUM WHISKY - FOR SALE IN HARYANA ONLY" and 36 bottles of "ROYAL STAGE PREMIUM WHISKY - FOR SALE IN HARYANA ONLY - 42.8% V/V NET Qty 750 ml" were recovered from the rear boot of the car along with two number plates marked "T1222 JH 7384D". The number plate affixed to this vehicle was also found to be fake, and the actual number plate was kept in the boot.

3.3 Upon being strictly questioned, the three persons revealed that their other associates were following behind in an Accent car No.HR-34-K-2257 is carrying more liquor. Thereafter, the police team intensified their checks, and shortly thereafter, a white Accent car, having Registration No.HR-34-K-2257 was seen and stopped.

3.4 The person sitting in the driver's seat stated his name as Lokesh alias Leela, son of Dilip Kumar, resident of 75 Dharmapura, Police Station Najafgarh, District South-West, Delhi, aged about 29 years, ***caste- Punjabi Parashar*** *and the women sitting in the front passenger seat stated her name as Nisha, daughter of Rajesh, wife of Sanjeet, originally resident of RZ 30 Laxmi Vihar, Dichau Kalan, District South-West, Delhi, presently*

residing at House No. 105, Dinpur, Najafgarh, Police Station Najafgarh, District South-West, Delhi, ***caste-Brahmin****. On a personal search, one Oppo mobile phone, light sky-blue in colour, was recovered from the pocket of her trousers.*

3.5 On searching the car, 230 bottles of "ROYAL CHALLENGE CLASSIC PREMIUM WHISKY" and 24 bottles of "ROYAL STAGE PREMIUM WHISKY - 42.8% V/V Net Qty 750 ml - FOR SALE IN HARYANA ONLY" were recovered from the boot of the car; two number plates bearing "BR01DE 0941" were also recovered.

3.6 When both vehicle drivers and other persons sitting inside were asked to produce a license for possession and transportation of liquor, they failed to do so and all stated in unison that they earn their livelihood from selling liquor and Praveen Chhetri - the applicant- is their gang leader. Upon further strict interrogation of the accused, they stated that they bring liquor from Haryana and sell it at higher prices in Bihar to earn monetary profit, and that they keep changing the vehicle number plates while travelling to and fro.

4. Being aggrieved by the registration of FIR and initiation of subsequent proceedings, the applicant has preferred the present petition on the following grounds inter alia stating;

4.1 That the applicant has been falsely implicated in the present case at the behest of the police because of an ulterior motive.

4.2 The actual facts are that the applicant had gone to Etawah to attend a family gathering on account of the death of a relative. Upon conclusion of the post-death rituals, he attempted to arrange public transport to return home, but, finding it too late at night, discovered that no public transport was available.

4.3 While exploring other options, the applicant was informed by a restaurant owner that public transport might be available on the nearby highway. Acting on this advice, the applicant reached the highway and sought help from multiple passing vehicles, but none stopped. Eventually, after repeated attempts, a black Scorpio vehicle came to a halt. Upon the applicant's request, the driver agreed to give him a lift and asked him to board the vehicle.

4.4 Soon, thereafter, the police intercepted the said vehicle, conducted a search, and recovered certain alleged liquor bottles. The applicant was then falsely implicated in the case, despite having neither committed any offence nor possessed any knowledge of the said recovery.

4.5 At the relevant time, the applicant had only Rs.1,150/- in his possession. He was neither the driver nor the owner of the said vehicle, nor acquainted with the two other persons travelling therein.

5. During the course of argument, this Court observed that the Investigating Officer has mentioned the caste of the accused against their name, therefore, by order dated 3.3.2025 the Director General of Police was directed to file a personal affidavit justifying the requirement and relevance of mentioning the caste of a suspect or a group of persons named in an FIR or during a police investigation in a caste-ridden society, where social divisions continue to influence law enforcement practices and public perception.

6. Pursuant to the aforesaid direction, the Director General of Police filed an affidavit inter alia stating:

6.1 Generally, police do not ask/disclose the caste of the accused either in the First Information Report or in the Recovery memo, but due to the reason that there could be several persons of the same name in the same village or area and as such, identification of the real accused has become very crucial task to the police and in such circumstances for avoiding any confusion in future, often police record caste. The police authorities, at the time of preparing the Recovery Memo, are required to comply with the law, particularly regarding cases related to the Excise and N.D.P.S. Act. In the present case, the memos were prepared on the spot and signed by the accused persons. A copy of the Recovery Memo was provided to the accused person on the spot. In such circumstances, the Investigating Police Officer, to avoid any confusion regarding the identity of the accused person, as per the version of the accused, must have mentioned the caste.

6.2 The police do not discriminate against the accused persons on the basis of caste or religion or place of residence, as the only aim and intention of the investigating officer is to disclose the truth regarding the incident so that the real culprits shall be put behind bars. The police investigate as per the procedure established by law without favouring anyone. Additionally, it relied on the Government Letter dated 10.12.1997, issued based on the instructions by the central government to implement a computerised crime and criminal tracking and network system for effective investigation.

6.3 The Government of India and the National Crime Record Bureau have developed a computerised Crime and Criminal Tracking Network and Systems (CCTNS), and the State Government has implemented the Integrated Investigation Form since 10.12.1997 for the purpose of better scientific investigation. As such, the contents of the form can only be amended either by the Central Government or by the National Crime Records Bureau, the affidavit asserts. Therefore, to fill up the entries given in the Formats discussed herein below, and the police record, the name of the caste against the name of the accused and complainant/informant is mentioned.

6.4 Being a Welfare State, the government provides monetary benefits to the victims of members of the Scheduled Castes/Scheduled Tribes under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended from time to time and as such, victims and accused disclose their castes at the time of the incident to get the benefit of the State Government schemes.

6.5 The compliance affidavit has been accompanied with Format of First Information Report registered under section 154 Cr.P.C. (Police Form No.341), Crime Detail Form (Police Form No.178Ka), Property Seizure Memo [Search/Production/Recovery under/section----(Police Form No.173)], Arrest/Court Surrender Memo (Police Form No.401), Police Final Report prepared under section 173 Cr.P.C. (Police Form No.339), Court Disposal Form, and Result of Appeal.

7. On examination of aforesaid Formats, it′s revealed that there is no para in the **First Information Report Format** wherein it is mandatory for the police to mention the caste and religion of accused and complainant, in fact in Para No.7 the accused′s can be identified based on description accused′s sex, date/year of birth, build, height in centimetre,

complexion, identification mark/marks, deformities/peculiarities, teeth, hair, eye, habit(s), dress habit, language/dialect, burn mark, leukoderma mole, scarf and tattoo, if any.

*7.1 Similarly, on examination of the **Crime Detail Form**, it's revealed that there is no para for identification of the accused based on caste and religion; in fact, Para No.5 contains particulars of victims, wherein sub-para 7 & 8 mandate mention of religion and caste (whether SC/ST/OBC) respectively.*

*7.2 Similarly, on examination of **Arrest/Court Surrender Memo**, it is revealed that Para No.6 pertains to particulars of accused, wherein sub-para 8, 9 & 10 pertains to religion, caste/tribe and SC/ST respectively, besides name, Father's/Husband's Name, first alias, second alias, other alias, nationality, voter ID, passport number (date of issue and place of issue), permanent address with district and police station, and present address with district and police station. Para No.9 contains the descriptions of the accused's sex, date/year of birth, build, height in centimetres, complexion, identification mark/marks, deformities/peculiarities, teeth, hair, eyes, habit(s), dress habit(s), language/dialect, burn mark, leukoderma mole, scarf, tattoo and another other features. Para Nos.10 & 11 contain the requirements for fingerprints and the socio-economic profile of the accused, indicating their living status: living alone, with family or relatives in a pucca house/hotel/ kaccha house/ thached house/ slum, or being homeless. Besides educational qualification(s), occupation and income group, respectively.*

*7.3 Similarly, on examination of the **Police Final Report Format**, it is revealed that Para No.10 (VII & VIII) contains the requirement of religion, whether SC/ST, and occupation, besides other details of the accused charge sheeted. Likewise, Para No. 11 mandates the similarly required details of the accused persons not charged (suspected), besides other details such as name, father's or husband's name, year of birth, sex, nationality, passport number with date and place of issue, occupation, and address.*

*7.4 Whereas, on examination of the **Court Disposal Form, Result of Appeal**, and the **Property Seizure Memo**, no requirement of caste and religion has been observed.*

8. The DGP's affidavit emphasized three key justifications: first, the identification of the accused by caste name is done to avoid any confusion about the identity of the accused, and second, the contents of the Formats (annexed with the affidavit) may be amended either by the Union Government or the National Crime Records Bureau, and third, the police do not discriminate with accused persons on the basis of their caste or religion and conducts the investigation as per the procedure established by law - so far as the caste is concerned, the police scientific method of investigation have no impact on the psyche of the law enforcement agencies.

8.1 With regard to the police's stand on the identification of the accused based on caste, it is a legal fallacy. In the first quarter of the 21st century, the police still rely on caste as a means of identification. It's unfortunate. This is particularly untenable when modern tools such as body cameras, mobile cameras, fingerprints, Aadhar cards, mobile numbers, and parental details (Mother and Father, both) are available. In addition, the

Formats themselves already contain extensive descriptive fields relating to the accused, including sex, date/year of birth, build, height (in centimetres), complexion, identification marks, deformities/peculiarities, teeth, hair, eyes, habits, dress habits, language/dialect, burn marks, leukoderma, moles, scars, and tattoos, if any. Therefore, this Court is not impressed with the reasoning of the Director General of Police.

8.2 So far as the second issue is concerned, the stand of the police is not legally sustainable, since public order (policing) is a state subject1, and the State is empowered to amend the contents, whether by deletion or addition, to achieve the constitutional aim of a caste-less society. It's unfortunate, the State has taken no steps in align with constitutional morality.

8.3 The third issue warrants careful scrutiny of the influence of caste on the socio-psychological behaviour of society, the government and its organs. In a caste-ridden society where deep-rooted social divisions continue to shape both public perception and law enforcement practices, it becomes both necessary and appropriate to re-examine the practice of recording caste and religion in police reports and public documents.

9. In the present context, it may not be necessary to examine the origin of caste and its relevance in ancient Indian society, and even before the Britishers came to India. A reference to the judgment passed in the first quarter of the 19th century may no longer be fruitful. However, recent judgments of the Supreme Court, which contain mandatory directions prohibiting the mention of caste and religion in pleadings, are certainly relevant for arriving at a just decision. Notably, in the early 20th century, Indian courts frequently addressed the impact of caste on both societal dynamics and judicial functioning.

10. Before I dwell upon the judgment passed by the Supreme Court and examination of the critical view of the jurist, a re-look at the famous speech of Dr. B.R. Ambedkar delivered on 25.11.1949 on the conclusion of deliberations in the Constituent Assembly may fulfill the purpose and aspiration of the rising India, the confident India; a nation driven by vision, powered by innovation, and rooted in its timeless values. The relevant extracts are reproduced hereinafter: "In India, there are castes. The castes are anti-national. In the first place, they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. Fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.2"

10.1 Dr. Ambedkar further emphasized that "caste is not a physical object like a wall of bricks or a line of barbed wire which prevents the Hindus from commingling and which has therefore to be pulled down. Caste is a notion; it is a state of the mind."

11. In **Indra Sawhney v. Union of India**, the Supreme Court observed that secularism is the basic feature of the Indian Constitution. It envisages a cohesive, unified and casteless society. The Constitution has completely obliterated the caste system and has assured equality before the law. Reference to caste under Articles 15(2) and 16(2) is only to

obliterate it. The prohibition on the ground of caste is total; the mandate is that never again in this country shall caste raise its head. Even access to shops on the grounds of caste is prohibited. The progress of India has been from casteism to egalitarianism-from feudalism to freedom.

11.1 The caste system, which has been put in the grave by the framers of the Constitution, is trying to raise its ugly head in various forms. Caste poses a serious threat to secularism and, as a consequence, to the integrity of the country. Those who do not learn from the events of history are doomed to suffer again. It is, therefore, of utmost importance for the people of India to adhere in letter and spirit to the Constitution, which has moulded this country into a sovereign, socialist, secular democratic republic and has promised to secure to all its citizens justice, social, economic and political, equality of status and of opportunity.

12. The Supreme Court in **Ashok Kumar Thakur v. Union of India** has confirmed that achieving a casteless society is an ultimate aim of the Constitution.

13. Further, the Supreme Court in **State of Rajasthan v. Gautam s/o Mohanlal** observed that an accused has no caste or religion when the Court deals with the case. The Court emphasised that such information should not be included in the cause title of judgments, and this practice needs to be discontinued and held that, "an accused has no caste or religion when the Court deals with his case and further observed that the Court has failed to understand why the caste of the accused has been mentioned in the cause titles of the High Court and Trial Court judgments. The caste or religion of a litigant should never be mentioned in the cause title of the judgment. The Court was surprised that despite their earlier order dated 14th March 2023 that such practice should never be followed, it's still prevalent.

14. Similarly, the Supreme Court in **Shama Sharma v. Kishan Kumar**, while hearing a transfer petition filed by petitioner-wife under Section 25 of the Code of Civil Procedure, 1908, seeking transfer of petition for restitution of conjugal rights filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955, pending before the Principal Judge, Family Court, Sri Ganga Nagar, Rajasthan to a Court of competent jurisdiction at Faridkot, Punjab. The Supreme Court, while examining the Court's record, noted with surprise that the caste of both parties has been mentioned in the memo of parties, besides their other details. The Court directed all the High Courts to ensure that the caste/religion of a litigant does not appear in the memo of parties.

14.1 The Supreme Court observed that there was no reason for mentioning the caste/religion of any litigant even before Supreme Court or the courts below, and thus, shunned such practice and held that it must be seized forthwith, and passed general order directing that henceforth the caste or religion of the parties shall not be mentioned in the memo of parties of a petition/proceedings filed before the Supreme Court irrespective of whether any such details have been furnished before the courts below. A direction was also issued to all the High Courts to ensure that the caste/religion of a litigant does not appear in the memo of parties in any petition/suit/proceedings filed before the High Court or the

Subordinate Courts under their respective jurisdiction.

15. **"The Judges of the Supreme Court of India, 1950-1989"-** a seminal work by George H. Gadbois, Jr.9, presents a biographical essay for each of the first ninety-three judges who served on the Supreme Court from 1952 through mid-1989. The contents of the biographical essay were gathered in the only way they could be - from conversation with the judges. Chapter II of Part Two of the book deals with caste. It starts with "Caste, the most important differentiator in the Indian social life, is better indicative of social origin and class than parental occupation....." and the book concludes with the phrase that caste has also been one of the indicators in the appointment of Supreme Court judges- not in all, but in some cases- and the analysis ended with the observation that....."judges of the highest rank in all or nearly all nations will not be representative of the social make-up of their country."

16. Professor G. Mohan Gopal11, in the opening paragraph of his essay titled "Supreme but Pro-Caste: How the Jurisprudence of the Supreme Court of India Preserves and Protects India's Caste System", published in **"[In] Complete Justice? The Supreme Court at 75"**, edited by Justice S. Muralidhar12, invokes the words of Dr. B.R. Ambedkar, who cautioned: "Some say that they should be satisfied with the abolition of untouchability only, leaving the caste system alone. The aim of abolition of untouchability alone, without trying to abolish the inequalities inherent in the caste system, is a rather low aim." Drawing from Supreme Court judgments, Professor Gopal critiques the Court's approach to caste, arguing that it has, in effect, preserved and protected the caste system.

16.1 The following selected paragraphs are excerpted from Professor G. Mohan Gopal's essay, which critically examines the Supreme Court's approach to caste and underscores the need for a casteless society. The essay offers a perspective that may illuminate certain dimensions of the issue at hand. However, this Court does not, at this stage, fully concur with all the views expressed therein;

"Notwithstanding its rhetoric about a casteless society, in the seventy-five years of its existence, the SCI has protected and preserved the caste system. It has been an anti-catalyst in two ways: first, by suitably redefining three foundational legal concepts (caste, religion and Hindu); and second, by eviscerating reservation, which, as conceived by Dr. Ambedkar, is the intended constitutional weapon of caste destruction."

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"As the caste system is a system for vesting, divesting and regulating rights of individuals and social groups, it is a political system of government rather than a religious system or a social system. In effect, the varna-jaati system is a system of unequal citizenship. A system of government may be defined as a structure for the establishment and operation of institutions to distribute power and govern people by defining and regulating rights, claims, privileges, disabilities and liabilities. These are the practical functions of the varna-jaati system. The varna-jaati system should therefore also be recognised

for what it is in its essence: a form of government."

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"For instance, Article 17 abolishes, forbids and criminalises the practice of untouchability, and Article 25 vests freedom of religion in the 'individual' and not in groups. This is a radical rejection of the varna system, which does not recognise the individual except as a member of a group and vests all claims, privileges, liabilities and disabilities exclusively in groups. Further, Article 25 makes the right to religion subject to other fundamental rights."

17. The British colonial rule dramatically transformed the caste system. The first all-India census was carried out in 1871-1872 by the British to gather demographic status of the entire population of India for better administrative control, categorizing and freezing caste identities, turning fluid social groups into fixed administrative categories, besides other details like education, religion, occupation, military and non-military population, etc. The British rule in India used caste for governance and financial gain, creating caste groups and criminal tribes, and by introducing separate codified laws for different communities.

18. There is another aspect attached to the codified law and concept of justice, and there exists a fundamental distinction between the concept of justice and the framework of codified or statutory law. This difference becomes particularly evident when viewed through the lens of India′s colonial legal history.

19. The British introduced judicial reforms in India not with the intent of delivering justice in its truest sense, but rather to serve the administrative and commercial interests of the East India Company and subsequently the British Empire. The establishment of Diwani and Faujdari Adalats under Warren Hastings marked the beginning of this legal restructuring. His successor, Lord Cornwallis, continued these reforms, and the Charter Act of 1833 further advanced this project by allowing Indians to enter judicial services and establishing a Law Commission to codify laws.

20. As a result, several important statutes were enacted: the Civil Procedure Code (1859), the Indian Penal Code (1860), and the Criminal Procedure Code (1861), Indian Contract Act, 1872 and Succession and Custody Laws, among others. Nearly 52 Legislative Acts have been passed by British Colonial Rulers for India. Yet, despite the presence of a comprehensive legal framework, there was widespread discontent among Indians. The Indians recognized that while procedural law had been established, true justice remained elusive.

21. The colonial legal system, though codified law, for illustration; (i) Government of India Act, 1858, the British Parliament passed its Act to liquidate the East India Company, following the 1857 mutiny, (ii) Government of India Act, 1919, and (iii) Government of India Act, 1935 often worked to undermine Indian resources, culture, governance, and autonomy. The application of law was frequently a tool of exploitation, not emancipation. It can be best demonstrated by the fact that in 1650, India′s GDP was 25% of the world′s GDP, and by 1950, when the British left India, it′s GDP reduced to 2% of the world′s GDP!

Imagine how much wealth was created in those three hundred years, which was transferred to Britain.

22. This disconnect between law and justice fuelled mass movements- such as the Non-Cooperation Movement, the Quit India Movement, and other struggles for Swarajya- that ultimately led to pass the Indian Independence Act, 1947.

23. This historical experience teaches us an essential lesson: the mere existence of law does not guarantee justice. Procedural codes, however well-structured, can fail to serve the people if they are not grounded in principles of JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith, and worship; EQUALITY of status and of opportunity; and to promote among all FRATERNITY assuring the dignity of the individual and the unity and the integrity of the Nation.

24. Therefore, in the contemporary Indian judicial landscape, the pursuit of justice demands a holistic appreciation of the entire judicial framework rather than mere adherence to codified law and the law propounded through judgments. Structural judicial reform is urgently needed- reform that prioritizes justice not only in theory but in alignment with the rule of law, ensuring that the law and government policies serve WE, THE PEOPLE OF INDIA, not the other way around.

25. Caste in India is not merely a system of social stratification - it is a deeply embedded psychological and legal phenomenon that influences identity, behaviour, and access to rights. Caste has been institutionalized over centuries through religious texts, social customs, and cultural practices. The caste-based notion of superiority, especially among historically privileged castes, persists in the collective consciousness despite constitutional guarantees of equality and dignity. It is a human-made construct- not a genetically evolved condition, like the evolution of humans from homo sapiens to present-day human beings; It′s not a divinely ordained system.

26. The Constitution of India enshrines the principle of equality and explicitly prohibits caste-based discrimination through several key provisions. Article 14 guarantees "equality before the law" and "equal protection of the laws" to all individuals. Article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Yet, caste-based discrimination continues to exist in society, and the Courts have recognized this in various judgments, particularly in matters involving atrocity laws and reservations.

27. Many individuals from privileged caste(s) experience cognitive dissonance when confronted with their privilege. While they may intellectually accept constitutional equality, they often deny structural discrimination, attributing marginalized groups. This denial acts as a psychological defence mechanism to preserve caste identity and caste based privileges without overt guilt. This fosters implicit bias and a persistent sense of social superiority, which resists rational legal intervention.

28. The psyche behind the caste dominance is the assertion of identity amid insecurity. These displays often come from privileged and socially anxious caste groups as India moves towards urbanization, inter-caste mingling, and

affirmative programmes, formerly privileged castes experiencing status anxiety- a fear of losing historical privileges. Further, it′s a reflection of cultural narcissism and group egotism. Caste is turned into a performative identity, an ego project, where pride is rooted not in individual merit but in fake ancestral valour or a delusion rooted in fictitious mythical supremacy. This behaviour echoes the concept of "culture of dominance", where marginal superiority is exaggerated to cover deep-seated inferiority. The sociology-psychological implications of collective narcissism, wherein individuals anchor self-worth in caste identity rather than merit or civic virtue, and symbolic intimidation of caste emblems signals dominance and discourages inter-caste social mixing, stimulate digital echo chambers of the mind.

29. What manifests as caste pride is often not about identity but insecurity, not about history but hegemony. It reflects a failure of the education system, law enforcement, and political class to instil constitutional values of FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation.

30. The caste-based congregation and associations gather to assert caste identity, influence the political landscape and determine access to resources, rituals and even entry to temples and crematoriums. In such a scenario, a fair treatment of merit and respect for hard work is the least expected.

31. The resurgence of caste identifiers in public and digital spaces is not the beginning of a cultural phenomenon- it is a coded assertion of social power that contradicts India's constitutional values. In the northern part of India- in states like Uttar Pradesh, Haryana, Punjab, Rajasthan, and parts of Madhya Pradesh and Bihar- individuals commonly mark their cars, bikes, and sometimes homes with caste identifiers. Vehicles adorned with caste emblems, slogans or even warnings.

32. The rise of digital platforms like Instagram, YouTube Shorts, and Facebook Reels has given young caste-identified individuals a platform for performance. These reels often romanticize caste aggression and dominance, rural masculinity, and regressive honour codes. The socio-psychological, cultural, and legal dimensions of such behaviour reveal how the assertion of caste in public domains undermines constitutional morality and reflects an identity crisis rooted in historical superiority and modern insecurity.

33. Social media becomes an echo chamber for hyper-masculine caste identity, historical revisionism (e.g., glorifying feudal lords or caste based political leaders). It promotes a toxic digital masculinity rooted in caste, weaponizing tradition in a postmodern format. The digital caste ego is further influencing the cognitive behaviour of the youth, thereby undermining the constitutional morality of brotherhood and unity.

34. The collective political will, bureaucratic setup, and law enforcement agencies are oblivious to the aforementioned social trend. The reasons are best known to them; either they have accepted it as the future of the new India, or their cognitive behaviour and social psyche have been shaped by caste narcissism.

35. The police and other law enforcement agencies are not immune to

these societal biases. They often reflect, reproduce, and sometimes intensify caste-based prejudices. It becomes necessary to deal with the cognitive behaviour of law enforcement officials in India when influenced by caste-ridden thought, combining insights from the conduct infused by social psychology, and behavioural patterns reflected in contemporary cases. This is evident from discrimination and segregation in the education and justice departments that remain rampant across India, driving inequality in education, life opportunities, and in justice delivery system.

36. The cognitive behavior of law enforcement officials-as evident from the facts of the present case and observed in others-reflects a caste consciousness that persists in the mind, as there was no legal requirement for the investigating officer to mention the caste of accused persons in order to bring them to justice, still the investigating officer mentioned the accused caste in the impugned FIR and the search and seizure memo highlights one of the most serious challenges to constitutional democracy in India. It reveals that the problem of caste is not just in society or religion but embedded in the mental framework of the State itself. Legal and institutional reforms must be accompanied by a moral and psychological revolution in the minds of those entrusted with upholding the law. Only then can we hope to dismantle the caste matrix that continues to influence India's criminal justice system.

37. Even though Article 15 of the Indian Constitution protects individual Indians from discrimination based on religion, race, caste, sex and place of birth. Yet, nearly 75 years after the Indian Constitution came into force, the critical and influential institutions of State are still influenced by a malignant system that often adopts immoral caste, sex and religion-based preferences under the guise of so-called "independence" and "transparency". The preferences for the privileged class of society undermine our national unity and compromise merit and hard work. The individual's hard work, excellence and individual achievement are compromised in favour of a detrimental framework. The hard work and merit of individuals should not be stigmatized, demeaned, or shut out of opportunities because an individual does not come from the privileged category of class.

38. The psyche behind an inflated ego is a myth, and the constitutional instrumentalities need to bust it. It is not just regressive- it is resistant to the idea of a progressive, transformed, developed, modern, and unified India. India's future lies in social integrity and participative democracy. Confronting this psyche requires more than regulation; it demands social re-education, moral awakening, and deconstruction of caste as a symbol of worth. The real pride of a citizen must lie not in caste, but in character- and not in legacy, but in equality and fraternity. Equality means equal opportunities for all, and fraternity means a collective sense of brotherhood. It is not a subject of good and impressive literature, but rather one to be embodied in practice through body, action, and behavior. It's about engaging your whole self.

39. To address the psychological dimensions of system based privileges and behavior sentiments, legal reform must go beyond punitive measures, and the rule of law shall be given prominence while dealing with biases, and to eliminate such

biases and prejudices, the sensitization of the judiciary and police through anti-bias training programmes and introducing new curricular reform to challenge casteist and sexiest narratives in schools and colleges, and in bureaucratic set- ups. Strengthening social justice jurisprudence with attention to lived experience, rather than just legal definitions, and implementing legal literacy campaigns to dismantle internalized superiority may serve a useful purpose in establishing a caste-less and gender neutral society.

40. So far as caste based discrimination is concerned, the policy and rule makers must consider curbing caste emblems and slogans in public vehicles and regulating caste glorification content on social media, and promoting inter-caste institutions and community centres instead of exclusive caste based institutions.

41. While anti-discrimination laws provide punishment for caste based exclusion, they cannot by themselves dismantle centuries-old social structures. In India, caste is not merely a matter of discrimination but also a significant aspect of identity and the assertion of power. The caste-based political rallies, glorification of caste in TV debates, caste-based songs and social media content, caste-based leadership, and caste-based congregations remain frequent, undermining the very spirit of constitutional morality and anti-discrimination provisions of the Indian Constitution. Even matrimonial ads in newspapers and online portals openly mention caste preferences, reflecting deep social conditioning. Instead of promoting equality, the media often becomes a mirror of entrenched hierarchies.

42. India′s legal framework against caste based discrimination is amongst the most comprehensive in the world. Articles 14, 15 & 17 of the Constitution explicitly guarantee equality and outlaw discrimination. However, most measures focus on protection and affirmative action, not on dismantling social prejudices that arises because of discrimination based on caste. The law can punish overt acts of discrimination, but it does little to address the subtle everyday forms of exclusion still prevalent in institutions, schools, workplaces, and villages.

43. There is no national wide awareness programme specially targeted at caste prejudice, like campaigns on cleanliness and gender equality. The school have a policy on inclusion, but there is no systematic curriculum module dedicated solely to anti-caste education. Government often treats caste issues as matters of law and order, focusing on punishing atrocities rather than preventing them through dialogue, community reforms, providing equal opportunity where there is no reservation, and or sensitization through sustained campaigns.

44. To minimize caste discrimination, the government needs sustained programmes alongside laws- a national campaign promoting social harmony and caste equality. School curriculum modules should teach children about equality, dignity, and the dangers of caste prejudice. Community-level initiatives, mandatory training for public officials, teachers, and employees on caste sensitivity, and media campaigns highlighting positive stories of caste integration and the danger of caste prejudices, may be taken by reference from history.

45. The law alone cannot change hearts and minds. The absence of sustained

government programmes to eliminate discrimination may not fulfil its Constitution obligation towards a casteless society. India must move beyond punishment and economic schemes to create proactive programmes of education, awareness, and social reform to achieve constitutional morality and the vision of an equal and inclusive society in participative democracy. The affirmative programmes and economic schemes have their own worth but cannot substitute the aforesaid pro-active programmes.

46. The investigative impartiality and enforcement neutrality must be consciously cultivated, especially in a society where caste is pervasive. Writing or declaring the caste of an accused- without legal relevance-amounts to identity profiling, not objective investigation. It reinforces prejudice, corrupts public opinion, contaminates judicial thinking, violates fundamental rights, and undermines constitutional morality.

47. The Court is not impressed with the justification offered by the Director General of Police. In the Court′s view, the DGP, coming from a third-world background, appears to have little exposure to the complex realities of Indian society and the demands of professional policing. True legal and professional acumen necessarily requires an understanding of society-its nature, its functioning, and its constitutional values. Yet, despite holding the state's highest police office, he conducted himself like an ivory-tower policeman, detached from constitutional morality, and eventually retired merely as a bureaucrat in uniform.

48. Recording the caste of the accused as *Mali, Pahadi Rajput, Thakur, Punjabi Parashar, and Brahmin* ***(emphasis supplied)*** in the impugned FIR and Seizure Memo serves no lawful or legitimate purpose. What is truly unfortunate is that, rather than recommending a departmental inquiry or ensuring the officer undergoes sensitization on constitutional morality and social concerns, the conduct was defended on vague and unsustainable grounds. Such insensitivity on the part of the state's highest police authority compelled this Court to engage in a deeper deliberation on the larger issue of caste based prejudices, leading to the issuance of recommendations (with the hope and expectation that a serious and deliberate consideration by the Union would strengthen the intent of these deliberations to achieve constitutional obligations towards caste-less society) to various departments of the Union Government, as well as specific directions to the State of Uttar Pradesh.

49. The sole purpose of the observation made herein above is merely an attempt to invoke constitutional morality and awaken a sense of compassion and justice in the conscience of those occupying the highest constitutional offices. Constitutional authorities must never forget that the dignity of the Nation does not emanate from lineage or caste affinity, but from adherence to constitutional morality and the collective effort of building a strong national character. Pride in ancestry or social identity cannot be a substitute for the values of equality, justice, and fraternity enshrined in the Constitution. True honour for one′s office, and true service to the people, lies in upholding these principles with humility and devotion. Reverence for the Constitution, rather than for lineage, is the highest form of patriotism and the truest expression of national service. Such

conduct, if any, by the constitutional authority undermines the constitutional morality.

50. Before parting, I would like to observe that India has resolved to become a developed nation by 2047, marking the centenary of its Independence. To truly realize this vision, it is imperative that we eradicate the deeply entrenched caste system from our society.

50.1 This goal demands sustained, multi-level efforts from all levels of government-through progressive policies, robust anti-discrimination laws, and transformative social programs. While the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act exists to address specific abuses, there remains no comprehensive law aimed at dismantling the caste system itself and its pervasive social influence.

50.2 As rightly asserted by social reformers such as Raja Ram Mohan Roy, Jyotiba Phule, Savitribai Phule, Dr. B.R. Ambedkar, Swami Vivekananda, Narayana Guru, Vinoba Bhave, Kandukuri Veeresalingam and Swami Dayanand Saraswati-among many others-the glorification, institutionalization, or promotion of caste-based identities and programs runs counter to the spirit of national unity and progress. Such practices are, in effect, anti-national.

50.3 A nation's development is best measured not just by economic growth, but by two fundamental benchmarks: the effective implementation of the rule of law and the realization of an egalitarian society. If we are sincere in our commitment to becoming a truly developed nation by 2047, the annihilation of caste must be a central part of our national agenda. History has made this lesson clear for us!

RECOMMENDATIONS

51. Based on the aforesaid deliberations, the government may prepare a regulated framework to regulate and amend the Central Motor Vehicle Rules (CMVR) to explicitly ban caste-based slogans and caste identifiers on all private and public vehicles. Issue uniform circulars to RTOs and traffic departments across the state to enforce the removal of caste signage and impose heavy fines, which may act as a deterrent. Strengthen provisions under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, to flag and act against caste-glorifying, hate-inducing content on social media. Support media literacy and anti-casteism campaigns targeting youth on platforms like Instagram, YouTube, and WhatsApp. May set up a Monitoring and Reporting Mechanism for citizens to enable them reporting portals and mobile apps to anonymously report violations in collaboration with (i) Ministry of Road Transport & Highways (MoRTH), (ii) Ministry of Electronics and Information Technology (MeitY), (iii) Press Council of India, and (iv) Civil society organizations working on caste equity and digital rights.

DIRECTIONS FOR UTTAR PRADESH GOVERNMENT

(a) *In para-6, the name of the mother of the complainant/informant, along with the Father's/Husband's Name, shall be added in the* ***Format of FIR****. (Reference: Page 7 of the Counter Affidavit)*

(b) *In para-3, the name of the mother shall be added along with the name*

of the Father/Husband of the person who has shown the place of occurrence. Column No. 8 of para 5 shall be deleted from the format of the ***Crime Details Form****. (Reference: Page 11 of the Counter Affidavit).*

(c) Name of mother shall be added in para-5 & 6 of the ***Property Seizure Memo*** *along with the name of Father/Husband. (Reference: Page 17 of the Counter Affidavit).*

(d) In Para 6(1), the name of the mother of the accused shall be added along with the name of the Father's/ Husband's Name, whereas Para 6(9) and 6(10) shall be deleted from the ***Arrest/Court Surrender Memo****. (Reference: Page 19 of the Counter Affidavit)*

(e) In Para 8 (Kha), the name of the mother of the complainant/informant shall be added along with Father's/Husband's Name, and Para 10 (vii) shall stand deleted so far as the requirement of SC/ST/OBC is concerned from the ***Police Final Report****. Likewise, similar changes shall be made in the paragraph. 11. (Reference: Page 22 & 23 of the Counter Affidavit).*

(f) In brief, the entries, in paragraph and column pertaining to the requirement of caste or tribe shall stand deleted, whereas the Mother's Name shall be added along with the name of father and husband in all the aforesaid FORMATS annexed with the counter affidavit filed by Director General of Police, UP.

(g) It's learnt that the notice board installed at all the police stations of Uttar Pradesh carries a column of the ***caste*** *against the name of the accused; the government shall issue an appropriate order to delete (erase) the same with immediate effect immediately after receipt of the copy of this order.*

(h) It is also brought to the court's notice that in rural India, sub-urban towns (Kasbas and Tehsils), and even in certain colonies of district headquarters, certain disgruntled elements-driven by false caste pride and caste narcissism-have installed signboards glorifying caste and declaring specific geographical areas as caste territories or estates. Such signboards or proclamations must be removed forthwith, and strict measures should be taken to ensure that no such boards are erected or installed in the future. A formal regulation to this effect should be framed at the earliest by the competent authority.

52. The ACS (Home) in consultation with the DGP, Uttar Pradesh shall frame and implement Standard Operating Procedures (SOPs) to implement aforesaid guidelines, and amend police manuals/ regulation, if necessary, to prohibit the caste disclosure in investigations and public records of complainant/informant, accused and witnesses, however, complainant(s)/informant(s) are exempted only in cases where there is a statutory requirement for mentioning caste, like in cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and other public records.

53. The aforesaid directions shall be applicable in the territorial jurisdiction of Uttar Pradesh and are optional for the central government, as it was not before this Court.

54. Reverting to the prayer made in the present petition for quashing of the impugned criminal proceedings arising out of Case Crime No.108 of 2023, under Sections 420, 467, 468, 471 IPC read with

Sections 60/63 of the Excise Act, registered at Police Station Jaswant Nagar, District Etawah, as against the applicant, this Court has placed reliance upon the judgment of the Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and others**. In the said judgment, the Supreme Court elaborately discussed the scope of inherent powers under Section 482 Cr.P.C. and laid down guidelines for the exercise of such power, holding inter alia that where the allegations made in the First Information Report or complaint, even if taken at face value and accepted in their entirety, do not prima facie constitute any offense or make out a case against the accused, the criminal proceedings may be quashed besides other directions.

55. In the present case, upon perusal of the record and examination of the documents placed before the Court, it is prima facie established that the applicant was arrested on the spot, and upon personal search, an amount of Rs. 1,150/- and one Apple mobile phone (light sky-blue in colour), bearing IMEI Nos.**(i)** 355387490148201 and **(ii)** 355387490208206 were recovered from his pocket. Upon searching the Scorpio vehicle, 70 bottles of "ROYAL CHALLENGE CLASSIC PREMIUM WHISKY - FOR SALE IN HARYANA ONLY" and 36 bottles of "ROYAL STAGE PREMIUM WHISKY - FOR SALE IN HARYANA ONLY - 42.8% V/V NET Qty 750 ml" were recovered from the rear boot of the car. Additionally, two number plates bearing "T1222 JH 7384D" were recovered from the rear boot, and the number plate affixed to the vehicle was also found to be fake. During the course of the investigation, it was further revealed that the applicant is the gang leader involved in the smuggling of liquor.

56. Considering the nature of illegal smuggling of liquor across state borders for financial gain and applying the principles laid down in Bhajan Lal (supra), a prima-facie case is made out against the applicant. Therefore, no ground for quashing the impugned proceedings is made out.

57. As regards the submissions advanced by learned counsel for the applicant, they involve questions of fact that are to be determined by the trial court upon proper adjudication. Determination of factual issues, appreciation of evidence, or assessment of the reliability and credibility of the prosecution's version does not fall within the scope of jurisdiction under Section 482 Cr.P.C. In light of the material on record, it also cannot be held that the impugned criminal proceedings are manifestly tainted with mala fide, or maliciously instituted with an ulterior motive to wreak vengeance on the applicant, or to settle a personal or private grudge. Likewise, no illegality, perversity, or any substantial error has been pointed out in the impugned summoning order to warrant interference by this Court under Section 482 Cr.P.C.

58. Accordingly, the application under Section 482 Cr.P.C. is devoid of merit and is hereby **dismissed**, with the aforesaid directions to the Additional Chief Secretary (Home) and Director General of Police, Uttar Pradesh, to ensure compliance forthwith.

59. The Registrar (Compliance) is hereby directed to transmit a copy of this order to **(i)** the Chief Secretary, Uttar Pradesh, who in turn shall place a copy of this order to the Hon'ble Chief Minister, Uttar Pradesh, for information, **(ii)** Additional Chief Secretary (Home), and

Director General of Police, Uttar Pradesh, for compliance forthwith.

60. A copy of this order shall also be sent to (i) Union Home Secretary, Government of India; (ii) Secretary, Ministry of Road Transport & Highways (MoRTH); (iii) Secretary, Ministry of Electronics and Information Technology (MeitY), and (iv) Secretary, Press Council of India for information and future reference.

(2025) 9 ILRA 597
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.09.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Application U/S 528 BNSS No. 33290 of 2025

Smt. Sufia ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Abhishek Krishna

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Whether Consolidation Officer has jurisdiction to conduct preliminary enquiry u/s 340 Cr.P.C.

Headnotes

Code of Criminal Proceeding-sec 195(3), 340; Uttar Pradesh Consolidation Holdings Act, 1953 –sec 40-conjoint reading of Section 40 of the Act, 1953 and Section 195(3) Cr.P.C.-it is clear that consolidation authorities including the Consolidation Officer are revenue court-same is court for the purpose of Section 340 Cr.P.C.-if any false document is produced or false evidence is given before the Consolidation Officer- would be within its jurisdiction to conduct the preliminary enquiry u/s 340 Cr.P.C. in relating to the offence u/s 195(1)(b) of Cr.P.C.

Held, From perusal of Section 195(3) Cr.P.C., it is clear that revenue court is also a court and as per Section 40 of the Act, 1953, proceeding before the Settlement Officer Consolidation, Consolidation Officer and Assistant Consolidation Officer would be judicial proceeding.**(para 7)** (E-9)

Case Law Cited

Nil

List of Acts

1. Uttar Pradesh Consolidation Holdings Act, 1953
2. Code of Criminal Proceeding

List of Keywords

Sec. 340 Cr.P.C.; preliminary enquiry regarding the offence u/s 195(1)(b) Cr.P.C.;

Appearances of parties

Counsel for Applicant(s) : Abhishek Krishna
Counsel for Opposite Party(s) : G.A.

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

1. Heard Sri Abhishek Krishna, learned counsel for the applicant and learned AGA for the State.

2. The present application has been filed for the following relief:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to direct the learned Settlement Officer of Consolidation, District Azamgarh to conclude and decide the Misc. Case No.5 of 2023 [Sufia Vs Mohd. Wamik) under Section 340(2) of Cr. P.C., as well as direct the Consolidation Officer Phoolpur, District Azamgarh to conclude and decide the Misc. Case of 2019 (Sufia Vs Mohd. Wamik) under

Section 340 of Cr. P.C., pending before them for a long time, within the shortest period of time to be stipulated by the Hon'ble Court to avoid all inconvenience to the Applicant in the interest of justice."

3. Learned AGA has raised preliminary objection that application u/s 340 Cr.P.C. is not maintainable before the Consolidation Officer as the consolidation authorities are not the competent court as required u/s 340 Cr.P.C.

4. Learned counsel for the applicant in reply to the preliminary objection raised by the learned AGA submitted that proceeding before the consolidation authorities is judicial proceeding as per Section 40 of Uttar Pradesh Consolidation Holdings Act, 1953 (in short 'the Act, 1953'). Therefore, if any false evidence has been filed before the Consolidation Officer then the application u/s 340 Cr.P.C. would be maintainable before the Consolidation Officer.

5. To decide the aforesaid legal issue, it would be appropriate to discuss basic ingredients of Section 340 Cr.P.C. For ready reference, Section 340 Cr.P.C. (corresponding Section 379 BNSS) is being quoted as under:

"340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195."

6. From perusal of Section 340 Cr.P.C., it is clear that it basically provides procedure for conducting preliminary enquiry to satisfy whether offence u/s 195(1)(b) Cr.P.C. in respect of a document produced and given evidence in the proceeding of a court is prima facie made

out. Therefore, it is a procedure for satisfaction of court before filing a complaint regarding production or giving any forged document in relation to the proceeding of court and the proceeding u/s 195 Cr.P.C. cannot be initiated without a complaint. Section 195(1)(b) Cr.P.C. provides procedure of taking cognizance for the offence u/s 193 to 196, 199, 200, 205 to 211, 463, 471, 475, 476 or abetment of any of these offences which relates to giving or producing false evidence in a proceeding of any court. Section 195(3) Cr.P.C. defines the term 'court' as civil, revenue or criminal court including Tribunal constituted by or under the Central, Provincial or State Act. Section 195(3) Cr.P.C. is being quoted as under:

"195(3). In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section."

7. From perusal of Section 195(3) Cr.P.C., it is clear that revenue court is also a court and as per Section 40 of the Act, 1953, proceeding before the Settlement Officer Consolidation, Consolidation Officer and Assistant Consolidation Officer would be judicial proceeding. Section 40 of the Act, 1953 is being quoted as under:

"40. Proceeding before Settlement Officer, Consolidation, Consolidation Officer and Assistant Consolidation Officer to be judicial proceedings.

- A proceeding before a [Director of Consolidation, Deputy Director, Consolidation] [Inserted by U.P. Act No. 38 of 1958.], Settlement Officer, Consolidation, Consolidation Officer and Assistant Consolidation Officer shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for purposes of Section 197 of the Indian Penal Code."

8. Therefore with conjoint reading of Section 40 of the Act, 1953 and Section 195(3) Cr.P.C., it is clear that consolidation authorities including the Consolidation Officer are revenue court, therefore, same is court for the purpose of Section 340 Cr.P.C. and if any false document is produced or false evidence is given before the Consolidation Officer then the Consolidation Officer would be, within its jurisdiction to conduct the preliminary enquiry u/s 340 Cr.P.C. in relating to the offence u/s 195(1)(b) of Cr.P.C.

9. In view of the above analysis, this court is of the opinion that application u/s 340 Cr.P.C. (corresponding Section 379 BNSS) is maintainable and Consolidation Officer or other consolidation authorities would be, well within their jurisdiction to conduct preliminary enquiry regarding the offence u/s 195(1)(b) Cr.P.C. relating to giving or producing false document or evidence before it and after enquiry if the consolidation authorities are of the opinion that prima facie offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C. is made out then it will record its finding to that effect and make such complaint in writing and send it to the Magistrate of first class having jurisdiction thereof.

10. Considering the fact that application of the present applicant u/s 340 Cr.P.C. has been pending before the opposite party no.3-Consolidation Officer, Phoolpur, District-Azamgarh since 2019

but till date even the number has not been allotted to the misc. case to the file of application u/s 340 Cr.P.C., present application is **disposed of** with a direction to the opposite party no.3-Consolidation Officer, Phoolpur, District-Azamgarh to decide the application of the applicant u/s 340 Cr.P.C., expeditiously.

(2025) 9 ILRA 600
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Application U/S 482 No. 44649 of 2024

Smt. Geeta Devi ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:
Gaurav Singh Tomar, Subhash Gosain

Counsel for the Opposite Parties:
G.A.

Issue for consideration

Regarding maintainability of Application u/s 482 Cr.P.C. if approached after approaching the Revisional Court under Sections 397 or 399 Cr.P.C.

Headnotes

Maintainability-sec. 482 Cr.P.C.- Preliminary objection for maintainability - powers under Section 482 Cr.P.C., are not dependent on any other provisions of the Cr.P.C.- despite there being an express provision under Sections 397(3) and 399(3) Cr.P.C.- there cannot be a total ban on power u/s 482 Cr.P.C.- merely because the applicant has approached this Court after having approached the Revisional Court under Sections 397 or 399 Cr.P.C.- Section 482 Cr.P.C. application cannot be rejected on this ground alone- facts of the case- abetment of suicide must be express and cannot be implied- no express abetment to suicide-impugned order- facts has been duly appreciated by the trial court before rejecting the complaint case filed by the applicant. **Application dismissed.** (E-9)

Case Law Cited

1. Dharampal & Ors. vs. Ramshri : 1993 (1) SCC 435
2. Deepti alias Arati Rai vs. Akhil Rai & Ors. : 1995 (5) SCC 751
3. Rajathi vs C. Ganesan : 1999 SCC (Cri) 1118
4. Krishnan and Another vs. Krihnaveni and Another: AIR 1997 Supreme Court 987
5. Lakshmi Bai Patel vs. Shyam Kumar Patel : 2002 3 JT 409
6. Mohit vs. State of U.P. : 2013 (7) SCC 789
7. Criminal Misc. Writ Petition No. 718 of 2006 (Jagveer vs. State of U.P. and Another)
8. Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978
9. Raj Kapoor v. State, (1980) 1 SCC 43
10. Dhariwal Tobacco Products Ltd. v. State of Maharashtra, (2009) 2 SCC 370 SCC (Cri) 10]
11. Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30
12. Vijay v. State of Maharashtra, (2017) 13 SCC 317
13. Kaisar Jaha v. S.P., Distt. Sultanpur, 2024 SCC OnLine All 6758
14. Vijay Singh vs. State of U.P. and 7 Others (Application under Section 482 Cr.P.C.No. 14485 of 2024)
15. Nandu Alias Nandlal vs. State of U.P. and 7 Others (Application under Section 482 Cr.P.C. No. 2241 of 2025) dated 09.05.2025

List of Acts

1. Code of Criminal Procedure

List of Keywords

Sections 397 or 399 Cr.P.C.; Section 482 Cr.P.C.; preventing the abuse of the process of court or securing the ends of justice;exercise such power with self-restraint

Appearances of parties

Counsel for Applicant(s) : Gaurav Singh Tomar, Subhash Gosain
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Subhash Gosain, learned counsel for the applicant and and Sri Rakesh Kumar Mishra, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 09.10.2024 passed in Criminal Revision No. 02 of 2024 (Smt. Geeta Devi vs. State of U.P. and Others) as well as the order dated 20.12.2023 passed in Complaint Case No. 173 of 2022 (Smt. Geeta Devi vs. Sunil Kumar and Others) under Sections 306, 504, 506, 388 I.P.C. and under Section 203 Cr.P.C., P.S.- Kotwali Orai, District-Jalaun.

3. Learned A.G.A. has raised a preliminary objection with regard to the maintainability of the instant application under Section 482 Cr.P.C., as the applicant had already availed the remedy of revision under Section 397 Cr.P.C. and the said criminal revision was rejected. Relying upon the provisions of Section 397(3) as well as 399(3) Cr.P.C., learned A.G.A. submits that the second revision is barred under the Code of Criminal Procedure. Thus, the Application under Section 482 Cr.P.C. is nothing else but a second revision, which is specifically barred in the Code of Criminal Procedure, therefore, where there is a specific statutory bar the powers under Section 482 Cr.P.C., cannot be exercised.

4. In support of his submissions, learned A.G.A. has relied upon the judgments of the Apex Court in **Dharampal & Ors. vs. Ramshri : 1993 (1) SCC 435, Deepti alias Arati Rai vs. Akhil Rai & Ors. : 1995 (5) SCC 751** and also **Rajathi vs C. Ganesan : 1999 SCC (Cri) 1118**.

5. Per contra, learned counsel for the applicant relying upon the judgment of the Apex Court in **Krishnan and Another vs. Krihnaveni and Another: AIR 1997 Supreme Court 987**, which is a three-judge Bench, submits that there can be no fetters in the powers of the High Court under Sections 482 Cr.P.C. Once, the second revision is barred under the provision of the Code of Criminal Procedure, this Court has ample power to entertain the application under Section 482 Cr.P.C., if there is a miscarriage of justice. He has further relied upon the judgments in **Lakshmi Bai Patel vs. Shyam Kumar Patel : 2002 3 JT 409.**

6. Learned counsel for the applicant has further relied upon the judgment of the Apex Court in **Mohit vs. State of U.P. : 2013 (7) SCC 789**. He further places reliance upon the judgment of the Co-ordinate Bench of this Court in **Criminal Misc. Writ Petition No. 718 of 2006 (Jagveer vs. State of U.P. and Another)**, wherein it is held that while exercising the powers under Article 227 of the Constitution of India, the evidence available on record cannot be re-appreciated by this Court. Relying upon the aforesaid observation, learned counsel for the applicant submits that once the Application under Section 156(3) Cr.P.C. was rejected and the criminal revision filed against the same was also rejected, the matter requires re-appreciation of evidence, therefore, the remedy under Article 227 is not available to the applicant herein. Further, he submits that the remedy of second revision is also barred under the provisions of Section 397(3) and 399(3)

Cr.P.C. In view thereof, learned counsel for the applicant submits that where there is no remedy available to the applicant in a criminal case, the powers under Section 482 Cr.P.C. is unfettered and that can be exercised by this Court, if there is a miscarriage of justice.

7. In view thereof, learned counsel for the applicant submits that the application under Section 482 Cr.P.C. filed by the applicant is maintainable.

8. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the instant case.

9. The brief facts of the instant case are that the applicant herein filed an application under Section 156(3) Cr.P.C. against the opposite parties no. 2, 3 and 4, alleging therein that the son of the applicant herein was married to opposite party no.4. Since after the marriage, the opposite party no.4 used to quarrel with her son and used to pressurize him to transfer his property in her name and also bear the expenses of her maternal family members. In her application, she has also narrated various incidents and finally, it has been alleged that due to such torture and humiliation on the part of the opposite party no.4 and her family members, on 20.07.2021, at around 6:00 P.M., the son of the applicant herein went to his room, however, in the morning, when his room was not opened, then she informed the police and the police opened the door, and found that the son of the applicant herein had committed suicide. It is alleged that the opposite parties have abetted the son of the applicant to commit suicide and they are still threatening her for false implication in false cases. The said application was treated as a complaint case and thereupon the statements of witnesses under Sections 200 and 202 Cr.P.C. were recorded. However, vide order dated 20.12.2023, the complaint case of the applicant herein was rejected under Section 203 Cr.P.C. Aggrieved by the same, the applicant herein had filed the Criminal Revision No.2 (Smt. Geeta Devi vs. State of U.P. and Others) before the District and Sessions Judge, which has also been rejected vide impugned order dated 09.10.2024.

10. On the aforementioned backdrop, it has been submitted by learned A.G.A. that since the applicant has already availed the remedy of criminal revision, therefore, an application under Section 482 Cr.P.C. is not maintainable as the second revision is impermissible in view of the provisions of Sections 397(3) and 399(3) Cr.P.C.

11. Before proceeding further it would be relevant to take note of the provisions of Section 482 Cr.P.C. as well as Sections 397 and 399 Cr.P.C., which reads as under:

S. 397 Calling for records to exercise powers of revision

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) ***If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.***

S. 399 Sessions Judge's powers of revision

(1) In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-Section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under Sub-Section (1), the provisions of Sub-Sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, ***the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.***

S. 482 Saving of inherent power of High Court

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. From the perusal of the aforementioned provisions, it is apparent that Section 397(1) Cr.P.C. confers power upon the High Court as well as the Sessions Judge to call for records in exercise of power of revision. However, sub-section (2) of Section 397 Cr.P.C. limits the power under this Section and restrained that the said power cannot be exercised in relation to an interlocutory order passed in any appeal, inquiry, trial or other proceedings. Sub-section (3) of Section 397 Cr.P.C. further restrains and limits the power of revision that once the application under Section 397(1) has been made by any person either before the High Court or the Sessions Judge, no further application by the same person can be entertained by the either of them. Meaning thereby, the second revision by the same person is impermissible.

13. Similarly, sub-section (3) of Section 399 Cr.P.C, also states that order passed in a revision by the Sessions Judge shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court or any other court. Thus, according to the provisions of Section 399(3) Cr.P.C, further proceedings against the revisional order passed by the Sessions Judge are not permissible to be entertained even by the High Court or any other court.

14. Section 482 Cr.P.C. states the inherent power of the High Court and provides that nothing in this Code shall limit or affect the inherent power of the High Court to make such orders as may be necessary:

(i) to give effect to any order under this Code;

(ii) to prevent abuse of the process of any court; and

(iii) to secure the ends of justice.

15. Before proceeding further it would be relevant to take note of some of the judgements of the Apex Court in this regard.

16 In **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10]** the Three-Judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397(2) of the Code.

"6. The point which falls for determination in this appeal is squarely covered by a decision of this Court, to which one of us (Untwalia, J.) was a party in Amar Nath v. State of Haryana [(1977) 4 SCC 137 : 1977 SCC (Cri) 585] . But on a careful consideration of the matter and on hearing learned Counsel for the parties in this appeal we thought it advisable to enunciate and reiterate the view taken by two learned Judges of this Court in Amar Nath case but in a somewhat modified and modulated form. In Amar Nath case as in this, the order of the trial court issuing process against the accused was challenged and the High Court was asked to quash the criminal proceeding either in exercise of its inherent power under Section 482 of the 1973 Code corresponding to Section 561-A of the Code of Criminal Procedure, 1898 - hereinafter called the 1898 Code or the old Code, or under Section 397(1) of the new Code corresponding to Section 435 of the old Code. Two points were decided in Amar Nath case in the following terms:

(1) While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2).

(2) The impugned order of the Magistrate, however, was not an interlocutory order.

7. For the reasons stated hereinafter we think that the statement of the law apropos Point No. 1 is not quite accurate and needs some modulation. But we are going to reaffirm the decision of the Court on the second point.

8. Under Section 435 of the 1898 Code the High Court had the power to "call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its ... jurisdiction for the purpose of satisfying itself ... as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court", and then to pass the necessary orders in accordance with the law engrafted in any of the sections following Section 435. Apart from the revisional power, the High Court possessed and possesses the inherent powers to be exercised ex debito justitiae to do the real and the substantial justice for the administration of which alone Courts exist. In express language this power was recognized and saved in Section 561-A of the old Code. Under Section 397(1) of the 1973 Code, revisional power has been conferred on the High Court in terms which are identical to those found in Section 435 of the 1898 Code. Similar is the position apropos the inherent powers of the High

Court. We may read the language of Section 482 (corresponding to Section 561-A of the old Code) of the 1973 Code. It says:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

9. In most of the cases decided during several decades the inherent power of the High Court has been invoked for the quashing of a criminal proceeding on one ground or the other. Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court. In the background aforesaid, we proceed to examine as to what is the correct position of law after the introduction of a provision like sub-section (2) of Section 397 in the 1973 Code.

10. As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. ***On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the***

inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. *One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."*

17. Following the aforesaid judgement of **Madhu Limaye (supra)**, the Apex Court in **Raj Kapoor v. State, (1980) 1 SCC 43**, the Apex Court has observed as under:

"10. The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye case [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] ***this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution would be to say that the***

bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction" [(1977) 4 SCC 551, 556, para 10 : AIR 1978 SC 47, 51]

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. *The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)*

"The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

18. In **Dharampal (supra)**, the Division Bench of the Apex Court has observed as under:

"6. .....The Sessions Judge had dismissed the said application on May 14, 1979. Section 397(3) bars a second revision application by the same party. ***It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code.*** Hence the High Court had clearly erred in entertaining the second revision at the instance of respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

19. In **Deepti alias Arati Rai (supra)**, the Division Bench of the Apex Court has observed as under:

"4. .....It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and ***that inherent power under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code.*** *As we find that the order passed by the High Court is not legal and just it will have to be set aside....."*

20. In **Krishnan (supra)**, the Three Judges' Bench of the Apex Court has observed as under:

"10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. ***So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with*** *inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.*

21. In **Rajatjhi (supra)**, the Division Bench of the Apex Court has followed the judgement in Krishnan (Supra) and observed as under:

11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. ***All this the High Court did in***

exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles."

22. In **Laxshmi Bai Patel (supra)**, the Division Bench of the Apex Court has observed as under:

"(3) BEFORE taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under section 482 Cr. P.C. by the High Court in the facts and circumstances of the case. In a case where the sessions court exercising revisional power under section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. ***The position is well-settled that in such a case power under section 482 Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice."***

23. In **Dhariwal Tobacco Products Ltd. v. State of Maharashtra, (2009)** 2 SCC 370, the Division Bench of the Apex Court has observed as under:

"6. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab [AIR 1960 SC 866] to Som Mittal v. Govt. of Karnataka [(2008) 3 SCC 574 : (2008) 2 SCC (Cri) 1 : (2008) 1 SCC (L&S) 910] has laid down the criterion for entertaining an application under Section 482. ***Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code. Even where a revision application is*** *barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] .)* ***Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397(2) [Ed.: The intended provision seems to be Section 397(3).*** *In this regard See (1) Krishnan v. Krishnaveni, (1997) 4 SCC 241 : 1997 SCC (Cri) 544; (2) Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124; (3) Kailash Verma v. Punjab State Civil Supplies Corpn., (2005) 2 SCC 571 : 2005 SCC (Cri) 538.] of the Code,* ***the inherent power of the Court has been held to be available."***

24. In **Mohit v. State of U.P., (2013) 7 SCC 789**, the Division Bench of the Apex Court has observed as under:

"28. So far as the inherent power of the High Court as contained in Section 482 CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In

*other words**, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged."***

25. In **Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30**, the Three Judges' Bench of the Apex Court has observed as under:

6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"482. Saving of inherent powers of High Court.

.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

***"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more"**. (Raj Kapoor case [Raj Kapoor v. State, (1980) 1 SCC 43 : 1980 SCC (Cri) 72] , SCC p. 48, para 10)*

*We venture to add **a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable.***

*7. As a sequel, **we are constrained to hold that the Division Bench, particularly in para 28, in Mohit [Mohit v. State of U.P., (2013) 7 SCC 789 : (2013) 3 SCC (Cri) 727] in respect of** inherent power of the High Court in Section 482 **CrPC does not state the law correctly.** We record our respectful disagreement."*

26. In **Vijay v. State of Maharashtra, (2017) 13 SCC 317**, the Division Bench of the Apex Court has observed as under:

"7. After hearing the counsel and also after perusing the impugned order, we are of the considered opinion that the order of the High Court has no legs to stand in view of the law laid down by this Court in Prabhu Chawla [Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30] . In the above referred case, in view of the divergent opinions of this Court in Dhariwal Tobacco Products Ltd. [Dhariwal Tobacco Products Ltd. v. State of Maharashtra, (2009) 2 SCC 370 : (2009) 1 SCC (Cri) 806] and Mohit v. State of U.P. [Mohit v. State of U.P., (2013) 7 SCC 789 : (2013) 3 SCC (Cri) 727] , the matter was placed before the three-Judge Bench of this Court. The three-Judge Bench took the view that Section 482 CrPC begins with a non obstante clause to state:

"482. Saving of inherent powers of High Court.

-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent

abuse of the process of any court or otherwise to secure the ends of justice."

As Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation which is wholly unwarranted and undesirable. ***The three-Judge Bench has confirmed the law laid down by this Court in Dhariwal Tobacco Products Ltd. [Dhariwal Tobacco Products Ltd. v. State of Maharashtra, (2009) 2 SCC 370 : (2009) 1 SCC (Cri) 806]***

8. In view of the above settled law, ***mere availability of alternative remedy cannot be a ground to disentitle the relief under Section 482 CrPC and, apart from this, we feel that the learned Judge without appreciating any of the factual and legal position, in a mechanical way, passed the impugned order, which warrants interference by this Court.*** *Accordingly, the order of the High Court is set aside and the matter is remanded to the High Court for reconsideration in the light of the settled legal position."*

27. In **Kaisar Jaha v. S.P., Distt. Sultanpur, 2024 SCC OnLine All 6758**, the Coordinate Bench has observed as under:

"10. The two Judge Bench of the Hon'ble Supreme Court which decided Vipin Sahni (Supra) after relying upon the earlier two Judge Bench decision in the case of Mohit (Supra), did not take note of the ***three Judge Bench decision in the case of Prabhu Chawla (Supra), which will prevail over the two Judge Bench decision. Thus the law as it exists now is that there are no absolute restrictions on the inherent powers of this Court and availability of a remedy of filing a revision would not create an absolute bar against the inherent powers of this Court being invoked. However, the inherent power can be invoked only to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."***

28. In a recent judgement passed by this Court in Vijay Singh vs. State of U.P. and 7 Others (Application under Section 482 Cr.P.C.No. 14485 of 2024) dated 21.10.2024, the Coordinate Bench of this Court has observed as under:

"10. Thus, it is clear that availing of remedy of revision before Sessions Judge under section 399 Cr.P.C. does not bar a person from invoking power of High Court under Section 482 Cr.P.C. but High Court should not act as a second Revisional Court under garb of exercising inherent powers. ***While exercising inherent powers in such a matter, the High Court can interfere only where it is satisfied that if complaint is allowed to be proceeded with, it would amount to abuse of the process of Court or that interest of justice*** *otherwise call for quashing of the charges. When High Court on examination of record finds that there is grave miscarriage of justice or abuse of process of the Court or the required statutory procedure has not been followed with or there is failure of justice, it is the duty of High Court to have corrected it at the inception lest grave miscarriage of justice would ensue. It is therefore to meet the ends of justice or to prevent abuse of process that High Court is preserved with inherent powers and would be justified under such circumstance to exercise inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the Sessions*

Judge has declined to exercise his revisory power in the matter. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice and it has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court can not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. "

29. In the case of **Nandu Alias Nandlal vs. State of U.P. and 7 Others (Application under Section 482 Cr.P.C. No. 2241 of 2025)** dated 09.05.2025, the Coordinate Bench of this Court has observed as under:

"13. Thus, it is clear that ***availing of remedy of revision before Sessions Judge under section - 399 Cr.P.C. does not bar a person from invoking power of High Court under Section - 482 Cr.P.C. but High Court should not act as a second Revisional Court under garb of exercising inherent powers. Interference in such cases can only be made when there is grave miscarriage of justice or abuse of process of the Court or the required statutory procedure has not been followed with or there is failure of justice. It is therefore to meet the ends of justice or to prevent abuse of process that High Court is preserved with inherent powers and would be justified under such circumstance to exercise inherent powers."***

30. Thus, it is apparent that powers under Section 482 Cr.P.C., are not dependent on any other provisions of the Code of Criminal Procedure and the amplitude of this power is very wide and cannot be curtailed in any circumstances. However, since the power under Section 482 Cr.P.C is very wide and there is no restrictions on the same and it has been repeatedly held by the Apex Court that, except the self-restraint restrictions, there is no other restriction on exercise of power under Section 482 Cr.P.C. However, the said powers should be exercised in rarest of the rare cases with circumspection and intro-inspection. In view of the aforesaid authoritative pronouncement by Three Judges' Bench in **Madhu Limaye (supra), Krishnan (supra) and Prabhu Chawla (supra)**, it is settled position of law that, despite there being an express provision under Sections 397(3) and 399(3) Cr.P.C., there cannot be a total ban on the exercise of inherent power under Section 482 Cr.P.C. to prevent the abuse of the process of the court or to secure the ends of justice. In the light of the aforesaid judgements of Three Judges' Bench of the Apex Court in **Madhu Limaye (supra), Krishnan (supra) and Prabhu Chawla (supra)**, it can be safely concluded that judgement of Division Bench of the Apex Court in **Dharampal (supra)** and **Deepti alias Arati Rai (supra)**, relied by the learned A.G.A., do not hold the field. Therefore, merely because the applicant has approached this Court after having approached the Revisional Court under Sections 397 or 399 Cr.P.C., Section 482 Cr.P.C. application cannot be rejected on this ground alone. However, while entertaining an application under Section 482 Cr.P.C., the court must exercise such power with self-restraint and it should be exercised in the rarest of rare cases, only for the purpose of preventing the abuse of the process of court or securing the ends of justice.

31. Coming back to the facts of the instant case, from the complaint case it is apparent that there was a matrimonial dispute between the son of the applicant

herein and his wife. From the material available on record, it is apparent that the death of the son of the applicant herein was caused by asphyxia and ante-mortem hanging. Thus, the death of the son of the applicant was suicidal. However, it has been alleged that due to the matrimonial dispute between them, the opposite parties came to the applicant's house around 6:00 P.M. on 20.07.2021 and they threatened that the opposite party no.4 would stay in the applicant's house only when the land, car, etc. were transferred in the name of the opposite party no.4. Thereupon, on the same date, the son of the applicant herein went inside the room and locked it from inside and did not open it. In the morning after getting no response from the applicant's son, the police was called to open the door and afterwards it was found that he had committed suicide.

32. In her statement, it has been further stated by the complainant that after the said incident, the opposite party no.4 stayed in the applicant's house and the cremation of her son was done. Thereafter, after four to five days later, she has gone along with her brother and thereafter, the applicant went to report at the police station that, due to her abetment, her son had committed suicide. The aforesaid facts has been duly appreciated by the trial court before rejecting the complaint case filed by the applicant herein. It is a settled position of law that the abetment of suicide must be express and cannot be implied. However, from the entire allegations made on record, there is no express abetment to suicide on the part of the opposite parties except the usual chorus between husband and wife with regard to family properties.

33. Therefore, this Court does not find any illegality in the impugned orders passed by the court below. Accordingly, the instant application is **dismissed**.

(2025) 9 ILRA 613
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.09.2025

BEFORE

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

Appeal Under Section 37 of Arbitration And Conciliation Act 1996 Defective No. 112 of 2025

Jaiprakash Associates Ltd. ...Appellant
Versus
High Tech Tyre Retreaders Pvt. Ltd. & Anr ...Respondents

Counsel for the Appellant:
Rohan Gupta, Pranay Kumar

Counsel for the Respondents:
H.N. Singh (Sr. Advocate), Sumit Daga

Issue for consideration

Maintainability of Appeal u/s 37 of the Arbitration and Conciliation Act, 1996 against rejection of Application u/s 34

Headnotes

Arbitration and Conciliation Act, 1996- Application u/s 34 - has been closed for lack of jurisdiction-impugned- only orders setting aside or refusing to set aside an arbitral award u/s 34 are appealable u/s 37(1)(c) of the Act- the order passed returning the application without indicating alternative forum under the Code- which factually does not exist- the same amounts to refusing to set aside the award impugned under Section 34 of the Act- preliminary objection pertaining to the maintainability of the appeal u/s 37 of the Act overruled. (E-9)

Case Law Cited

1. BGS SGS SOMA JV Vs. NHPC LIMITED : (2020) 4 SCC 234

2. ESSAR Constructions Vs. N.P. Rama Krishna Reddy : (2000) 6 SCC 94
3. Chintels India Limited Vs. Bhayana Builders Private Limited : (2021) 4 SCC 602
4. Bharat Sanchar Nigam Limited Vs. M/s V.L.S. Diesel Engine Sales & Services : 2025:AHC:9344-DB

List of Acts

1.Arbitration and Conciliation Act, 1996

List of Keywords

Effect doctrine; maintainability of the appeal under Section 37 of the Act; order refusing to set aside award.

Appearances of parties

Counsel for Appellant(s) : Rohan Gupta, Pranay Kumar
Counsel for Respondent(s) : H.N. Singh (Sr. Advocate), Sumit Daga

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

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is directed against orders dated 13.09.2024, 19.10.2024 and 07.03.2025 passed by Commercial Court, Kanpur Nagar whereby the application filed by the appellant under Section 34 of the Act, has been closed for lack of jurisdiction and the application has been ordered to be returned, on account of passing of order dated 13.09.2024, the bank guarantee produced by the respondents has been ordered to be released and application filed by the appellant seeking correction in the order dated 13.09.2024 and restoration of the application as filed, has been rejected respectively.

2. The application was filed under Section 34 of the Act by the appellant against award dated 04.10.2017 passed by the U.P. State Micro & Small Enterprises Facilitation Council, Kanpur ('the Council'). During pendency of the proceedings under Section 34, an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') was filed by the ICICI Bank before the NCLT seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the appellant. The NCLT by its order dated 03.06.2024 admitted the application in terms of Section 7(5) of the Code against the appellant and passed certain directions including imposing a moratorium under Sections 13 and 14 of the Code.

3. The appellant filed Application 107Ga before the Commercial Court bringing on record the order dated 03.06.2024 passed by the NCLT. In the application, an assertion was made that no proceedings could be continued in the case against the appellant company and a prayer was made to take the order dated 03.06.2024 on record and pass consequential necessary directions.

4. Before the Commercial Court, on behalf of the respondents, submission was made that on account of the order passed by the NCLT, the matter cannot proceed and therefore, the same be returned.

5. The Commercial Court, after hearing the parties, referred to provisions of Section 14 of the Code and order passed by the NCLT under Sections 13 and 14 of the Code. The Commercial Court also took notice of provisions of Section 33 of the Code providing for bar of instituting suit or legal proceedings by or against the corporate debtor when a liquidation order has been passed and that the proviso to Section 33(5) provides that proceedings can be instituted with the prior approval of the Adjudicating Authority and that no such approval has been produced. The

Commercial Court further noticed the bar under Section 63 of the Code barring the jurisdiction of the civil court and came to the conclusion that on account of the order passed by the NCLT and for lack of any approval from the Authorised Authority and the bar created by Section 63, the Commercial Court now has no jurisdiction to hear and decide the said application under Section 34 of the Act and purportedly accepting the application filed by the appellant qua lack of jurisdiction, closed the proceedings. It further ordered that the application be returned and the case be consigned to record.

6. Subsequent to passing of the order, on an application made by the respondents, the bank guarantee furnished during pendency of the proceedings was ordered to be released on 19.10.2024. Whereafter, the appellant moved an application seeking correction in the order dated 13.09.2024 and restoration of the application which was dismissed on 07.03.2025.

7. At the outset, learned counsel for the respondents raised preliminary objection pertaining to maintainability of the present appeal under Section 37 of the Act. Submissions were made that under Section 37(1)(c) of the Act, appeal can lie only against an order passed by Commercial Court setting aside or refusing to set aside an arbitral award under Section 34 and as by the order impugned dated 13.09.2024, only for lack of jurisdiction the proceedings have been closed and application has been ordered to be returned, the order cannot be said to be 'refusing to set aside an arbitral award' and therefore, the appeal under Section 37 of the Act is not maintainable. Reliance was placed on **BGS SGS SOMA JV Vs. NHPC LIMITED : (2020) 4 SCC 234**.

8. Learned counsel for the appellant vehemently contested the submissions made. It was submitted that only the letter of the order impugned is not relevant, it is the effect of the order which is relevant for the purpose of determining maintainability of the appeal. It was submitted that the order passed is ex facie illegal, contrary to the law and essentially dismisses the application filed by the appellant under Section 34 of the Act and therefore, the appeal is maintainable. Submissions were made that the directions issued by the NCLT and purport of Section 14 of the Code have been totally misconstrued and reference has been made to Section 33 which has no application as the same applies during the liquidation process which is not the case. The direction ordering return of the plaint, is meaningless as none has the jurisdiction under any provision of law against the award other than the Commercial Court at Kanpur Nagar under Section 34 of the Act and as such the effect of the order impugned is refusing to set aside the award and therefore, the appeal is maintainable. Reliance was placed on **ESSAR Constructions Vs. N.P. Rama Krishna Reddy : (2000) 6 SCC 94 and Chintels India Limited Vs. Bhayana Builders Private Limited : (2021) 4 SCC 602.**

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

10. The provisions of Section 37 of the Act, insofar as relevant for the present appeal, read as under:

*"**37. Appealable orders**.-(1) Notwithstanding anything contained in any other law for the time being in force, an*

appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) ... ...

(b) ... ...

(c) setting aside or refusing to set aside an arbitral award under Section 34."

11. A plain reading of the above provision reveals that only orders setting aside or refusing to set aside an arbitral award under Section 34 are appealable under Section 37(1)(c) of the Act.

12. Hon'ble Supreme Court in the case of **BGS SGS SOMA JV (supra)**, while dealing with a case wherein the Commercial Court, Gurugram had returned the Section 34 petition for presentation to the proper court having jurisdiction in New Delhi, came to the conclusion that such an order on a petition, for presentation before the proper court does not fall within Section 37 of the Act and appeal would not be maintainable.

13. The judgment in the case of **BGS SGS SOMA JV (supra)** was considered by Hon?ble Supreme Court in the case of **Chintels India Limited (supra)** wherein, in a case where the Commercial Court refused to condone the delay in filing application under Section 34 of the Act taking into consideration the ?effect doctrine?, the Supreme Court came to the conclusion that the effect of the order refusing to condone the delay amounts to order refusing to set aside award, and held the appeal maintainable under Section 37(1)(c) of the Act.

14. While discussing the 'effect doctrine', the Hon'ble Supreme Court referred to the judgment in **ESSAR Constructions (supra)** and observed as under:

"22. The reasoning in Essar Constructions commends itself to us, being on a pari materia provision to that contained in Section 37(1)(c) of the Arbitration Act, 1996. We may only add that the reasoning of the aforesaid judgment is further strengthened by our analysis of the additional words "under Section 34' which occur in Section 37(1)(c), and which are absent in Section 39(1)(vi) the pari materia provision to Section 34 of the Arbitration Act, 1996 being Section 30 of the Arbitration Act, 1940.

23. In point of fact, the "effect doctrine" referred to in Essar Constructions is statutorily inbuilt in Section 37 of the Arbitration Act, 1996 itself. For this purpose, it is necessary to refer to Sections 37(1)(a) and 37(2)(a). So far as Section 37(1)(a) is concerned, where a party is referred to arbitration under Section 8, no appeal lies. This is for the reason that the effect of such order is that the parties must go to arbitration, it being left to the learned arbitrator to decide preliminary points under Section 16 of the Act, which then become the subject matter of appeal under Section 37(2)(a) or the subject matter of grounds to set aside under Section 34 an arbitral award ultimately made, depending upon whether the preliminary points are accepted or rejected by the arbitrator. It is also important to note that an order refusing to refer parties to arbitration under Section 8 may be made on a prima facie finding that no valid arbitration agreement exists, or on the ground that the original arbitration agreement, or a duly certified copy thereof is not annexed to the application under

Section 8. In either case i.e. whether the preliminary ground for moving the court under Section 8 is not made out either by not annexing the original arbitration agreement, or a duly certified copy, or on merits - the court finding that prima facie no valid agreement exists - an appeal lies under Section 37(1)(a).

24. Likewise, under Section 37(2)(a), where a preliminary ground of the arbitrator not having the jurisdiction to continue with the proceedings is made out, an appeal lies under the said provision, as such determination is final in nature as it brings the arbitral proceedings to an end. However, if the converse is held by the learned arbitrator, then as the proceedings before the arbitrator are then to carry on, and the aforesaid decision on the preliminary ground is amenable to challenge under Section 34 after the award is made, no appeal is provided. This is made clear by Sections 16(5) and (6) of the Arbitration Act, 1996 which read as follows:

"16. Competence of Arbitral Tribunal to rule on its jurisdiction.- (1) - (4)

(5) The Arbitral Tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the Arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

25. Given the fact that the "effect doctrine" is part and parcel of the statutory provision for appeal under Section 37, and the express language of Section 37(1)(c), it is difficult to accede to the argument of Shri Rohatgi."

15. Further, the judgment in the case of **BGS SGS SOMA JV (supra)** was distinguished by observing as under:

"32. The context in which para 17 of BGS SGS SOMA JV was made, was a context in which an application under Section 34 would have to be returned to the Court which had jurisdiction to decide a Section 34 application, dependent upon where the seat of the Arbitral Tribunal was located. In this context, it was held that a mere preliminary step, which did not lead to the application being rejected finally, cannot be characterised as an order which would result in the application's fate being sealed once and for all. The Court's focus was not on the language of Section 37(1)(c), nor were any arguments addressed as to its correct interpretation..."

16. From the above observations, it would be seen that the effect of the order passed by the Court under Section 34 of the Act is required to be seen for the purpose of examining the maintainability of the appeal under Section 37(1)(c) of the Act as to whether the order passed leaves any other avenue for the applicant to seek redressal against the award or the order passed puts an end to the challenge laid to the award passed by the Arbitral Tribunal, which in the present case is the Council. In case, the order passed like dismissal of application under Section 5 of the Limitation Act, which puts an end to the challenge to the award, the same has been held to be amounting to refusing to set aside the award under Section 34 whereas in case the application has been ordered to be returned for being presented before an appropriate forum, such order has been held to be non-appealable under Section 37 of the Act for the simple reason that the avenue continues

to remain available with the applicant to seek redressal against the award. As such, the effect of the order passed assumes significance while determining the aspect of maintainability and the said aspect cannot be determined by mere reference to the fact as to whether the order has been set aside or not.

17. This Court in **Bharat Sanchar Nigam Limited Vs. M/s V.L.S. Diesel Engine Sales & Services : 2025:AHC:9344-DB**, wherein an application under Section 34 of the Act was dismissed for non-compliance of provisions of Section 19 of the MSMED Act, after referring to judgment in the case of **Chintels India Limited (supra)**, came to the following conclusion:

"15. So far as the plea raised pertaining to the non-maintainability of the appeal by relying on the judgment in the case of Hindustan Copper Ltd. (supra) is concerned, the Hon'ble Supreme Court in the case of Chintels India Ltd. (supra), while dealing with the said aspect in a case where the application under Section 34 of the Act was dismissed on the ground of limitation, referring to "effect doctrine", came to the conclusion that the "effect doctrine" is part and parcel of statutory provision for appeal under Section 37 of the Act and the express language of Section 37(1)(c) resulting in dismissal of application on ground of purported non-compliance of a provision, needs to be considered on par with dismissal on merits. The plea raised, apparently, has no substance as, in the case of Hindustan Copper Ltd. (supra), the dismissal was on account of lack of territorial jurisdiction."

18. In the present case, it would be seen that the Commercial Court, based on the application made essentially for the purpose of placing on record the order passed by the NCLT has, by referring to certain provisions of the Code, come to the conclusion that the Court did not have the jurisdiction to hear and decide the matter, closed the proceedings for lack of jurisdiction and ordered for return of the application. The order passed returning the application without indicating alternative forum under the Code, which factually does not exist, seals the fate of the application once and for all, therefore, the same amounts to refusing to set aside the award impugned under Section 34 of the Act.

19. In view of the above discussion, based on the 'effect doctrine' as laid down in the case of **Chintels India Limited (supra)**, we do not find any substance in the preliminary objection raised by counsel for the respondents pertaining to the maintainability of the appeal under Section 37 of the Act.

20. Consequently, the objection is overruled.

21. List the appeal for further proceedings on 23.09.2025, as fresh.

(2025) 9 ILRA 618
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Matters Under Article 227 No. 5261 of 2025

Lala Singh & Ors. ...Petitioners
Versus
Chairman Board of Revenue, Lko & Ors. ...Respondents

Counsel for the Petitioner:
Santosh Kumar Srivastava, Manish Kumar Shukla

Counsel for the Respondents:
C.S.C.

Issue for Consideration
Arguments in said case were heard on 16.2.2025 and the judgment was reserved and even after expiry of six months the judgment was not declared

Head Notes
The Constitution of India,1950-Article 226; The Uttar Pradesh Zamindari Abolition and Land Reforms Act,1950- Section 333- Where judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application before the court concerned with prayer for early judgment and in case such an application is filed the same shall be listed before the said Bench within two days and when the judgment is not pronounced within six months, any of the parties would be entitled to move an application before the next superior authority/court to withdraw the said case and for being listed before another Bench for fresh arguments- Matter be re - heard and the arguments completed within two weeks from the date a certified copy of this order is produced before the court concerned and the judgment be pronounced within a period of six weeks thereafter, in accordance with law- Petition disposed.

Held- Direction issued to the authorities to follow the directions of Supreme Court in the case of Anil Rai Vs. State of Bihar, (2001) 7 SCC 318 in deciding the disputes before them. (E-15) **(Para 5 to 7)**

Case Law Cited
Anil Rai Vs. State of Bihar, (2001) 7 SCC 318;

List of Acts
The Constitution of India,1950; The Uttar Pradesh Zamindari Abolition and Land Reforms Act,1950

List of Keywords
Judgment not pronounced within a period of six months; Parties entitled to move application; For being listed before another Bench;

Case Arising From
Revision No.553 of 2023, computerized case No.R 2023104600553 (Randheer Singh Vs. Anurudha Singh) under Section 333 of U.P.Z.A. & L.R.Act which is pending before Board of Revenue

Appearances for Parties
Counsel for Petitioner(s) : Santosh Kumar Srivastava, Manish Kumar Shukla
Counsel for Respondent(s) : C.S.C.

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

1. Heard Sri S. K. Srivastava, learned counsel for the petitioners and Sri Yogesh Kumar Awasthi, learned Standing counsel for the respondents.

2. The grievance raised by the petitioners in the present writ petition is with regard to pendency of revision No.553 of 2023, computerized case No.R 2023104600553 (Randheer Singh Vs. Anurudha Singh) under Section 333 of U.P.Z.A. & L.R.Act which is pending before Board of Revenue. It has been submitted that arguments in the said case were heard on 16.2.2025 and the judgment was reserved and even after expiry of six months the judgment was not declared and, therefore, in the present writ petition following prayer has been made:-

"(a) (i) To issue a writ, order or direction in the nature of mandamus commanding the specially O.P. No.1 to decide the Revision No.553 of 2023 bearing computerized case No.R 2023104600553 Randheer Singh Vs. Anurudha Singh under Section 333 of U. P. Z. A. L. R. Act, 1950 within 3 months.

(b) To issue a writ, order or direction in the nature of mandamus commanding the specially O.P. No.1 to release the Revision No.553 of 2023 bearing computerized case No.R 2023104600553 Randheer Singh Vs. Anurudha Singh under Section 333 of U. P. Z. A. L. R. Act, 1950 for further argument/hearing."

3. Instructions were sought from the Board of Revenue to indicate the reasons whether the fact was correct and the matter was pending and judgment has been reserved for being pronounced. Learned Standing counsel has obtained instructions from Chairman, Board of Revenue and informed that the matter is likely to be re-heard and the next date fixed is 16.9.2025.

4. The aspect pertaining to the period within which judgments for the reserved cases have to be pronounced was considered by Hon'ble Supreme Court in the case of Anil Rai Vs. State of Bihar, (2001) 7 SCC 318 where with regard to High Courts it was directed that where judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application before the court concerned with prayer for early judgment and in case such an application is filed the same shall be listed before the said Bench within two days and when the judgment is not pronounced within six months, any of the parties would be entitled to move an application before the next superior authority/court to withdraw the said case and for being listed before another Bench for fresh arguments.

5. We see no reason as to why the said pronouncement of the Supreme Court should not be extended even to the revenue courts to decide the title disputes as a substitute to the civil courts. The pronouncement of Supreme Court in the case of **Anil Rai Vs. State of Bihar (2001) 7 SCC 318** passed in Criminal Appeals @ SLP (Crl.) No.s 4509-4510 of 2025 is as follows:-

"9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Code of Civil Procedure or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the Rule of Law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come to the expectation of the society of ensuring speedy, untainted and unpolluted justice.

10. Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for present, are as under:

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in case where the

judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that months.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances."

6. In light of the above, let the matter be re - heard and the arguments completed within two weeks from the date a certified copy of this order is produced before the court concerned and the judgment be pronounced within a period of six weeks thereafter, in accordance with law.

7. We further direct the authorities to follow the directions of Supreme Court in the case of **Anil Rai (supra)** in deciding the disputes before them.

8. Let a copy of this judgment be sent to Additional Chief Secretary (Revenue), Government of Uttar Pradesh for necessary compliance and for information to all the authorities concerned.

9. With aforesaid observations and directions the petition stands **disposed of**.

(2025) 9 ILRA 621
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 9600 of 2025

Pooran Lal ...Petitioner
Versus
Saurabh Kumar ...Respondent

Counsel for the Petitioner:
Gaurav Tripathi

Counsel for the Respondent:

Issue for Consideration

Whether plaint was liable be rejected under Order VII Rule 11 of C.P.C. for on ground that the suit filed by the plaintiff-respondent was barred under Section 14 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021?

Head Notes

The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021-Section 14; The Constitution of India, 1950-Article 227; The Code of Civil Procedure,1908-Order VII Rule 11; The Uttar Pradesh Revenue Code,2006-Sections 94,95 & 96-No averment in the plaint to the effect that the property taken by the plaintiff on lease from the defendant was an agricultural property- Property leased out to the plaintiff is described as part of Gata No. 340, which was leased out for the purposes of running a petrol pump for a period of thirty years -In the lease deed also there is no mention that the agricultural property is being leased out to the plaintiff-respondent- Court has to consider whether the application filed by the defendant-petitioner under Order 7 Rule 11 of the C.P.C. has been rightly rejected or not. Of course, the plea of jurisdiction as to whether the civil court or the revenue court will have the jurisdiction can always be decided after considering the evidence of the parties. Similarly, the plea that the suit is barred by statute can also be considered after evidence of the party- Petition dismissed.

Held-From the bare reading of the plaint, it cannot be said that the suit was barred either by the provisions of U.P. Revenue Code, 2006 or the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021. (E-15)

(Para 27, 29, 41 & 42)

Case Law Cited

Saleem Bhai vs. State of Maharashtra; (2003) 1 SCC 557; Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174: (2017) 5 SCC (Civ) 602; Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others; (2021) 9 SCC; Secretary of State Vs. Mask and Company A.I.R. 1940 PC 105, Privy Council; Abdul Waheed Khan Vs. Bhawani and others reported in 1966 (SC) 1718; Dhulabhai etc. Vs. State of Madhya Pradesh A.I.R. reported in 1969 SC(78); State of Tamil Nadu Vs. Ramalinga Samigal Madam reported in A.I.R. 1986 (SC) 794; Nagri Pracharini Sabha and another Vs. Vth Additional District and Sessions Judge, Varanasi and others reported in 1991 Supp (2) SCC 36; Vinod Infra Developers Ltd. v. Mahaveer Lunia and others reported in AIR 2025 SC 2933; Smt. Kushma Devi Vs. Darshan Singh And 4 Others in Matters Under Article 227 No. 113 of 2024 decided on 12.02.2024; Rame Gowda (dead) by LRS. v. M. Varadappa Naidu (dead) by LRS. reported in (2004) 1 SCC 769; Kum. Geetha, D/o Late Krishna & others v. Nanjundaswamy & others passed in Civil Appeal No. 7413 of 2023; Mangleshwar Prasad Vs. State Of U.P. And 6 Others in Writ C No. 24877 of 2023 decided on 03.10.2023; Ashik Ali Vs. Harigen in Second Appeal No. 439 of 1985 decided on 21.09.2015;

List of Acts

The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; The Constitution of India, 1950; The Code of Civil Procedure,1908; The Uttar Pradesh Revenue Code,2006

List of Keywords

Bare reading of the plaint; Cannot be said that the suit was barred; Order VII Rule 11; Suit barred by statute; Can be considered after evidence

Case Arising From

Order dated 26.05.2025 passed by Civil Judge (Junior Division), Pilibhit in Original Suit no. 261 of 2025 (Saurabh Kumar Vs. Pooran Lal) by which an application filed by the defendant-petitioner under Order VII Rule 11 of C.P.C. has been rejected.

Appearances for Parties

Counsel for Petitioners(s) : Gaurav Tripathi

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard Shri Gaurav Tripathi, learned counsel for the petitioner and perused the record.

2. This petition has been filed challenging the order dated 26.05.2025 passed by Civil Judge (Junior Division), Pilibhit in Original Suit no. 261 of 2025 (Saurabh Kumar Vs. Pooran Lal) by which an application filed by the defendant-petitioner under Order VII Rule 11 of C.P.C. has been rejected. The revision filed against the order dated 26.05.2025 has also been dismissed by the revisional court i.e. District Judge, Pilibhit by order dated 30.05.2025. The order passed by the revisional court is also under challenge in the present writ petition.

3. Brief facts of the case are that Original Suit No. 261 of 2025 was instituted by the plaintiff-respondent for the relief of permanent injunction restraining the defendant, his agents from interfering with the peaceful possession of the plaintiff over the land which was given to the plaintiff on the basis of a lease deed. The second prayer made in the plaint was that a mandatory injunction be granted directing the defendant to accept the rent from the plaintiff and issue a receipt for the same and in case, the same is not done, the plaintiff be permitted to deposit the rent in the court. Case of the plaintiff as set up in the plaint is that the property in dispute was leased to the plaintiff vide lease deed dated 11.10.2019 and the plaintiff-respondent is in peaceful possession over the land in dispute. The defendant-petitioner started interfering with the possession of the plaintiff of which he had no right and therefore, the suit for permanent injunction was filed for restraining the defendant from interfering with the possession of the plaintiff. The averments were also made that the defendant has accepted rent till 31.12.2020 and thereafter, though, defendant received rent till 2023 but did not issue receipts. Later on, the defendant did not accept the rent for the year 2024, other pleas were also taken. The defendant in the suit moved an application under Order VII Rule 11 of C.P.C. for rejection of the plaint on ground that the suit filed by the plaintiff-respondent was barred under Section 14 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred as 'Act of 2021') and therefore, the plaint was liable to be rejected. The plaintiff-respondent filed objection to the said application. The trial court by its order dated 28.05.2025 rejected the application filed by the defendant-petitioner under Order VII Rule 11 of C.P.C. The revision filed by the defendant-petitioner was also rejected by the order impugned dated 30.05.2025. Hence the present petition.

4. Though the initial application was filed only on the ground that the suit was barred by the provisions of Section 14 of Act of 2021 but at the stage of argument, it was also contended by defendant-petitioner before trial court that the suit was barred by Sections 94, 95 and 206 of U.P. Revenue Code, 2006.

5. Contention of learned counsel for the petitioner is that lease of agricultural land can be granted only for a period of fifteen years as per Section 94 of the U.P. Revenue Code, 2006 at a time and since the lease in the present case relied upon by the plaintiff, is of thirty years therefore, the same is not valid. It has also been contended by counsel for the petitioner that sub-Section 7 of Section 94 of the U.P. Revenue Code, 2006 provides that in case of any dispute arising out of private lease agreement granted by bhumidhar or regarding any term and condition thereof the lessee and lessor shall make all efforts to amicably resolve and settle the dispute

amongst themselves or if, mutually agreed by using mediation by a third party, arbitrator or Gram Panchayat or Village Revenue Committee. It has been further contented that as per sub-Section (7)(b) of Section 94 of the U.P. Revenue Code, 2006, if the dispute is not settled through mechanism mentioned in clause (a) either party may file a petition before the Sub Divisional Magistrate and Sub Divisional Magistrate shall adjudicate the dispute using summary procedure within a period of 30 days from its institution. Against the order of Sub Divisional Magistrate, an appeal is provided under sub-Section 7(d) of Section 94 of the U.P. Revenue Code, 2006. It has also been submitted by counsel for the petitioner that Section 206 of U.P. Revenue Code, 2006 provides for jurisdiction of civil and revenue courts and in view of the provisions of Section 94, 95 read with Section 206 U.P. Revenue Code, 2006, the civil suit is not maintainable before the civil court as the Revenue Code provides for a mechanism to settle the dispute. Learned counsel also submitted that the suit even otherwise is bad as the same was hit by Section 14 of the Act of 2021.

6. Before considering the submissions made by counsel for the petitioner, it would be appropriate to look into the provisions of U.P. Revenue Code, 2006 as well U.P. Regulation of Urban Premises Tenancy Act, 2021. Sections 94, 95(7) and 206 of U.P. Revenue Code, 2006 are quoted as under:-

"[94]. Private Lease by a Bhumidhar. *(1) A Bhumidhar may lease out his holding or any part thereof to any person, firm, company, partnership firm, limited lability partnership firm, trust, society or any other legal entity for agriculture or for setting up a solar energy plant. Such lease shall be known as the private lease by a bhumidhar.*

(2) Private lease by a Bhumidhar means a contract based on an agreement, with mutually agreed terms and conditions, between Lessor, who may be a Bhumidhar and the Lessee who wishes to undertake agricultural activities or set up a solar energy plant, by which the Lessor grants permission to the Lessee to use the land or holding or any part thereof for agricultural purposes or for establishment of solar energy plant, against a consideration in cash or kind or a share of produce, payable to the Lessor as per the lease agreement.

(3) Period of private lease by a bhumidhar- maximum period of the private lease by a Bhumidhar shall not exceed fifteen years at a time. Provided that, after the expiration of the first lease period, the duration of lease period may be further extended by mutual consent of the Lessor and the Lessee: Provided further that for purpose of establishing a solar energy plant, the maximum period may be upto thirty years.

(4) Conditions of the private Lease by a bhumidhar- The terms and conditions of the private lease by a bhumidhar shall be as mutually agreed between the Lessor and Lessee. The general conditions of the lease shall be in such manner as may be prescribed.″

'95.

1...6....

(7) Disputes arising out of private lease by a bhumidhar-

(a) In an event of a dispute arising out of the private lease agreement by a bhumidhar, or anyterms and conditions thereof; the Lessee and the Lessor shall make all efforts to amicably resolve and settle the dispute amongst themselves or if mutually agreed, by using

mediation by a third party arbitrator or Gram Panchayat or Village Revenue Committee.

(b) If the dispute is not settled through the mechanism mentioned in clause (a)either party may file a petition before the Sub-Divisional Officer.

(c) The Sub-Divisional Officer shall adjudicate the dispute using the summary procedure within a period of thirty days of its institution.

(d) An appeal against the order, other than an interim order, passed by a Sub-Divisional Officer, shall lie before the Commissioner. The decision of Commissioner shall subject to the provision of section 210, be final.″

"206.Jurisdiction of civil Courts and revenue courts

"(1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Code, no Civil Court shall entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government, the Board, any Revenue Court or revenue Officer is, by or under this Code, empowered to determine, decide or dispose of.

(2) Without prejudice to the generality of the provisions of sub-section (1), and save as otherwise expressly provided by or under this Code-

(a) no Civil Court shall exercise jurisdiction over any of the matters specified in the Second Schedule;and

(b) no Court other than the revenue Court or the revenue officer specified in column 3 of the Third Schedule shall entertain any suit, application or proceeding specified in column 2 thereof.

(3) Notwithstanding anything contained in this Code, an objection that a Court or officer mentioned in sub-section (2)(b) had or had no jurisdiction with respect to any suit, application or proceeding, shall not be entertained by any appellate, revisional or executing Court, unless the objection was taken before the Court or officer of the first instance, at the earliest opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

7. Section 14 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 is also quoted as under:-

"14.Deposit of Rent with Rent Authority (1) Where the landlord refuses to accept any rent and other charges payable or refuses to give a receipt, the rent and other charges shall be paid to the landlord by postal money order or any other method, in such manner as may be prescribed, consecutively for two months, and if the landlord refuses to accept the rent and other charges within such period, then the tenant may deposit the same with the Rent Authority in such manner as may be prescribed.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:-

(a) the premises for which the rent and other charges payable are deposited alongwith a description sufficient for identifying the premises;

(b) the period for which the rent and other charges payable are deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent and other charges payable;

(d) the reasons and circumstances for which the application for depositing the rent and other payable charges is made;

(e) such other particulars as may be necessary.

(3) Where the tenant is unable to decide as to whom the rent is payable during the period of tenancy agreement, the tenant may, in such case, deposit the rent with the Rent Authority in such manner as may be prescribed.

(4) Where the rent is deposited under sub-section (3), the Rent Authority shall enquire the case as to whom the rent is payable and pass orders as he may deem fit on the basis of the facts of the case.

(5) The withdrawal of rent and other charges payable, deposited under subsection

(1) or sub-section (2), shall not by itself operate as an admission against the landlord or any other claim made by the tenant, if the landlord withdraws it to the extent of rent upon under the tenancy agreement."

8. So far as contention of counsel for the petitioner that the present suit is barred by Section 14 of Act of 2021 is concerned, it would be relevant to note that The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was repealed and the present Act of 2021 was passed by the U.P. Legislature in view of the directions given by the Supreme Court in certain matters, the Draft Model Tenancy Act prepared by Central Government and on the basis of recommendations made by the U.P. Law Commission in this regard. Provisions of Act of 2021 applies to the premises (as defined under the Act of 2021) let out.

9. Sub-Section (c) of Section 2 of Act of 2021 provides the definition of 'premises', which is quoted as under:-

"(2)(c) "premises" means any building or part of a building which is, or is intended to be, let on rent for the purpose of residence or for commercial or for educational use, except for industrial use and includes,-

(i) garden, garage or closed parking area, vacant land, grounds and out-houses, if any, appertaining to such building or part of the building; and

(ii) any fitting to such building or part of the building for the more beneficial enjoyment thereof, but does not include premises such as hotel, lodging house, dharamshala or inn;"

10. From the perusal of the definition of 'premises' as provided by sub-Clause (c) of Section 2 of Act, 2021, it is apparent that Act of 2021 applies only to buildings or part of buildings which is let out and not the open land. Sub-clause (c)(i) of Section 2 of Act of 2021 though, provides that the premises will include grounds, if the same is appertinent to such building or part of building. Here, in this case, the lease granted to the plaintiff was regarding an open piece of land.

11. Section 14 of the Act of 2021 provides for deposit of rent with rent authority. Section 14 of the Act of 2021 only provides a mechanism for deposit of rent and does not bar filing of any suit and therefore, the contention of counsel for the petitioner that the suit is barred under Section 14 of the Act of 2021 is wholly misconceived as firstly, the Act of 2021 does not apply to open piece of land unless the same comes within the definition of 'premises' as provided by sub-Section (c) of Section 2 of Act of 2021 and secondly, that the Section 14 of the Act of 2021 only provides for method for deposit of rent and nothing beyond. Provisions of Act of 2021

applies to urban building and not to open piece of land.

12. It will be useful to examine the provisions of Order VII Rule 11 CPC before considering the submissions made by learned counsel for the petitioner. Rule 11 of the Order VII CPC is quoted as under :-

"11. Rejection of plaint " The plaint shall be rejected in the following cases:″

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate];

[(f) where the plaintiff fails to comply with the provisions of rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

13. In **Saleem Bhai vs. State of Maharashtra; (2003) 1 SCC 557**, the Apex Court while considering Order VII Rule 11 of the Code held as under: (SCC 560, Para 9) :-

"A perusal of Order 7 Rule 11 CPC. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage...."

14. In case of **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174: (2017) 5 SCC (Civ) 602**; the Apex Court has summarized the legal position as follows :-

"The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is

drastic, the conditions enumerated under Order 7 Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

15. Recently, the Apex Court in case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others; (2021) 9 SCC 99** has reiterated the same principle (paras 25, 25.1 and 25.2), which are as follows :-

"25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

25.1 To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

25.2 The defense made by the defendant in the suit must not be considered while deciding the merits of the application;"

16. In case of Srihari Hanumandas Totala (Supra), the Apex Court was considering with an objection regarding bar of res judicata and not of limitation.

17. Section 9 of the Code of Civil Procedure enables the civil court to try all suits of civil nature excepting suits of which cognizance is barred either specifically or impliedly. A litigant having a grievance of civil nature has, independently of any statue, has a right to institute a suit in a civil court unless its cognizance is either expressly or impliedly barred.

18. In **Secretary of State Vs. Mask and Company A.I.R. 1940 PC 105, Privy Council** has observed that it is settled law that exclusion of jurisdiction of civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

19. The Supreme Court in case of **Abdul Waheed Khan Vs. Bhawani and others** reported in **1966 (SC) 1718** has held in paragraph no. 9 as under:

"Under s. 9 of the Code of Civil Procedure, a civil court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed."

20. In case of **Dhulabhai etc. Vs. State of Madhya Pradesh A.I.R.** reported

in **1969 SC(78)** in paragraph no. 32 has summarized the position as under:-

"32. Neither of the two cases of Firm of Illuri Subayya(1) or Kamla Mills(2) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all ques- tions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3)...

(4)...

(5)...

(6)...

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

21. The Supreme Court in case of **State of Tamil Nadu Vs. Ramalinga Samigal Madam** reported in **A.I.R. 1986 (SC) 794**, in paragraph no. 14 has held as under:-

"14. Thirdly, having regard to the principle stated by this Court while enunciating the first proposition in Dhulabhai's case (supra) it is clear that even where the statute has given finality to the orders of the special tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of civil Court's jurisdiction."

22. Again in case of **Nagri Pracharini Sabha and another Vs. Vth Additional District and Sessions Judge, Varanasi and others** reported in **1991 Supp (2) SCC 36** in paragraph no. 2 and 3 of the judgment has held as under:

"2. A litigant having a grievance of a civil nature has, independently of any statue, a right to institute a suit in the civil court unless its cognizance is either expressly or impliedly barred. The position

is well settled that exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must be either express or implied.

3. Reliance has been placed by Mr. Mukhoty before us on the ratio of the Constitution Bench decision of this Court in K.S. Venkataraman & Company v. State of Madras, where reference has been made to the Privy Council case in Raleigh Investment Company Limited v. The Governor General in Council. It has been laid down that the Civil Court's jurisdiction would be presumed unless the contrary is indicated. Mr. Mukhoty has also relied upon two other decisions being Ganga Bai v. Vijay Kumar and Others, and Dhulabhai v. The State of M.P. The legal position thus seems to be clear and it is not necessary to quote further authorities."

23. Thus, from the case laws as discussed above, it is clear that normally there will be a presumption as to the jurisdiction of the civil court unless the same is expressly or impliedly barred and the burden will be upon the person who asserts the exclusion of jurisdiction of civil court.

24. So far as contention of counsel for the petitioner that private lease of agricultural land can be made by a bhumidhar under Section 94 of the U.P. Revenue Code, 2006. Sub-Section 3 of Section 94 of U.P. Revenue Code, 2006 provides that the maximum period of private lease by bhumidhar shall not exceed 15 years at a time and in case of lease for the purpose of establishing a solar energy plant, the maximum period may be up to thirty years. It has been further contended by counsel for the petitioner that admittedly in the present case, the lease has been granted for the purpose of running a petrol pump for a period of thirty years which is in violation of sub-Section (3) of Section 94 of U.P. Revenue Code, 2006 and as such the lease is not valid and is hit by Section 94(3) of U.P. Revenue Code, 2006. It has been further submitted by learned counsel for the petitioner that in view of sub-Section (7) of Section 95 of the U.P. Revenue Code, 2006, the dispute regarding lease, if any, has to be settled between the bhumidhar and his lessee amicably, failing which, either of the party may file a petition before the Sub Divisional Officer, who shall adjudicate the dispute within thirty days. Any person aggrieved with the order passed by the Sub Divisional Officer under sub-Section (7)(c) of Section 95 of U.P. Revenue Code, 2006 may file an appeal before the Commissioner and the decision of the Commissioner subject to the provisions of Section 210 of U.P. Revenue Code, 2006 will be final.

25. The U.P. Revenue Code is a special law. Application of provisions i.e. Section 94 & 95 of the U.P. Revenue Code, 2006 is only in cases where the private lease is made of agricultural land and not otherwise as the lease of land which is not agricultural land can be made under general law i.e. Transfer of Property Act.

26. Since while deciding an application under Order VII Rule 11 of C.P.C., it is only the averments in the plaint has to be seen. I have perused the plaint, with the help of learned counsel for the petitioner, the description of the property given in the plaint is Gata No. 340 area 0.60 hectares situated village Jiraunia, Pargana, Tehsil and District- Pilibhit. The boundaries of the property in dispute has also been given. In paragraph No. 2 of the plaint, it has been stated by plaintiff that the plaintiff has taken the property in dispute

from the defendant through a registered lease deed dated 11.10.2019 and since the date of lease, the plaintiff is in possession over the property described in the plaint. There is no averment in the plaint to the effect that the property taken by the plaintiff on lease from the defendant was an agricultural property. The description of the property in the plaint, Gata No. 340 and the property has not been described as bhumidhari land of the defendant.

27. Further, I have perused the lease deed which has been annexed by the petitioner at Page No. 68 of the writ petition, and filed by the plaintiff before the court below therein also the property leased out to the plaintiff is described as part of Gata No. 340, which was leased out for the purposes of running a petrol pump for a period of thirty years. In the lease deed also there is no mention that the agricultural property is being leased out to the plaintiff-respondent.

28. In case of **Vinod Infra Developers Ltd. v. Mahaveer Lunia and others** reported in **AIR 2025 SC 2933**, it has been held by Supreme Court that position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

29. Thus, from the bare reading of the plaint, it cannot be said that the property which was leased out to the plaintiff was an agricultural property requiring a lease under Section 94 of the U.P. Revenue Code, 2006. It is only the contention of the defendant that the land leased out to petitioner was agricultural land which in my view cannot be seen at the stage of deciding the application under Order 7 Rule 11 C.P.C.

30. Further in view of Section 80 of the U.P. Revenue Code, 2006, if the agricultural land is being used for the commercial or residential purposes, the Sub Divisional Magistrate may suo moto or on an application moved by the Bhumidhar, after making such inquiry as may be prescribed to make a declaration that the land is used not for the purpose not connected with the agriculture. Even under the provisions of U.P. Revenue Code, 2006, the lease of bhumidhari plot can be granted by the bhumidhar after getting a declaration under Section 80 of the U.P. Revenue Code, 2006. The effects of a declaration under Section 80 of the U.P. Revenue Code, 2006 are being provided under Section 81 of the U.P. Revenue Code, 2006 which is quoted as under:-

"81. Consequences of declaration: Where a declaration has been made under Section 80 the following consequences shall, in respect of such holding or part to which it relates ensue :

(a) all restrictions imposed by or under this Chapter in respect of transfer of land shall cease to apply to the bhumidhar with transferable rights;

(b) notwithstanding anything contained in Chapter XI, the land shall, with effect from the commencement of the agricultural year following the date of declaration, be exempted from payment of land revenue;

(c) the bhumidhar shall, in the matter of devolution be governed by the personal law to which he is subject.″

31. From the averments made in the plaint as well as in the lease deed, it cannot be said that the lease of the land granted by the defendant-petitioner to the plaintiff-respondent was of an agricultural land.

32. As the property leased out is not described as bhumidhari land, the objection as to the validity of the lease granted by the defendant-petitioner to the plaintiff-respondent can be adjudicated only after framing an issue in this regard and after considering the evidence led by the parties in the suit and not at the stage of deciding the application under Order VII Rule 11 of C.P.C.

33. So far as contention of counsel for the petitioner that suit is not cognizable by civil court in view of Section 206 of the U.P. Revenue Code, 2006 is concerned, this Court has taken a view in case of **Smt. Kushma Devi Vs. Darshan Singh And 4 Others in Matters Under Article 227 No. 113 of 2024** decided on **12.02.2024**, relying upon various judgments of this Court as well as of the Hon'ble Supreme Court that for filing the suit for injunction simpliciter there is no prohibition in any of the clauses of Section 206 of U.P. Revenue Code, 2006. The jurisdiction of the civil court to entertain a suit for injunction is neither expressly barred nor by implication.

34. Paragraph Nos. 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31 & 32 of the judgment in case of Smt. Kushma Devi v. Darshan Singh and 4 others passed in Matter under Article 227 No. 113 of 2024 by this Court is quoted as under:

"18. From the perusal of provisions of Section 206 of the U.P. Revenue Code, 2006, it is clear that in the first place, Section 206 of the Code makes a general declaration that no civil court shall entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government, the Board, any revenue officer or a revenue court is empowered to determine, decide or dispose of under this Code.

19. Then comes Section 206 (2) of the Code which has been divided in two parts.

i. Clause (a) of the Section expressly excludes the jurisdiction of civil court on all matters specified in the Second Schedule.

ii. Clause (b) of 206 (2) further lays down that no court other than revenue court or revenue officer specified in the Third Schedule shall entertain any suit, application or proceedings specified in the said schedule.

21. Section 206 (2) (a) refers to the Second Schedule and provides that no civil court shall have jurisdiction over any of the 16 matters specified in the said schedule.

22. Learned counsel for the petitioner has relied upon Clause 15 and 16 of the Second Schedule and has contended that the suit is barred by Section 206 of the Code. Clause 15 relates to any claim regarding possession over any land and Clause 16 states that any claim to establish right of co-tenure holder in respect of any land.

23. From the pleadings as noted above neither the Clause 15 nor Clause 16 applicable in the present case. As from the plaint's allegation, it is clear that it has been contended by the plaintiff-respondents that the defendants in the suit has no right to the property as they have already sold

their share much before filing the present suit. So, there is no question of any claim to establish the right of a co-tenure holder as stated in paragraph 16 of the Second Schedule. The Clause-15 will also not apply for the reason, the petitioner is claiming an injunction, restraining the defendant-petitioners in the suit from interfering with their possession.

24. So far as the proceedings covered under the Third Schedule do not include the suit for injunction except for there is a mention of Section 133 and 137(1) of the U.P. Revenue Code, in the Third Schedule, it has been mentioned that the suit for injunction, compensation etc. (Section 133) and suit for possession, compensation and injunction (Section 137).

25. Section 133 of the U.P. Revenue Code, 2006 relates to suit for injunction, compensation etc. Section 133 of the U.P. Revenue Code, 2006 is quoted as under:

"133. Suit for injunction, compensation etc.- The [Gram Panchayat] or the land-holder may, in lieu of suing for ejectment of an asami under Section 131, file a suit in the Court of Sub-Divisional Officer.

(a) for injunction restraining him from putting the land to any unauthorised use or causing any waste or damage to it;

(b) for compensation for such use, waste or damage; or

(c) for repair of the waste or damage caused to the land."

26. From the perusal of Section 133 it is clear that Section 133 contemplates a suit by the Gram Panchayat or by the land-holder for injunction restraining the asami from putting a land to any unauthorized use or causing any waste or damage to it instead of suing for ejectment of asami under Section 131 of U.P. Revenue Code, 2006.

27. Section 133 of the Code will not apply to the suit simpliciter for injunction as in the present case.

28. Section 137 provides for remedies for wrongful ejectment. Section 137 of U.P. Revenue Code 2006 is quoted as under:-

"137. Remedies for wrongful ejectment:

(1) An asami ejected or apprehending ejectment from or prevented from obtaining possession of any land otherwise than in accordance with the provisions of any law for the time being in force, may sue the person so ejecting him, trying to eject him or keeping him out of possession –

(i) for possession of the [land; or]

(ii) for compensation for wrongful dispossession; or

(2) When a decree is passed for compensation for wrongful dispossession but not possession the compensation awarded shall be for the whole period during which the asami was entitled to remain in possession."

29. Section 137 of the U.P. Revenue Code, 2006 provides only for compensation and possession in case of asami is ejected or apprehends ejectment and the provisions of 137 will clearly not be applicable in the present case.

31. This court in case of Rajeshwar Gupta and another Vs. Smt. Gauri Devi and others reported in 2017 (134) RD 34 has held as under:-

"14. It is settled law that a suit for injunction can be maintained also on the ground of possessory title. A person in possession over some property can defend his possession and claim an injunction for protecting such possession, from the entire world, except the true owner."

32. From the discussion made above that it is clear that for filing a suit

simpliciter for injunction there is no prohibition in any of the clauses of section 206 of the UP Revenue Code, 2006. The jurisdiction of the civil court to entertain a suit for injunction is neither expressly barred nor by implication.″

35. The Supreme Court in case of **Rame Gowda (dead) by LRS. v. M. Varadappa Naidu (dead) by LRS.** reported in **(2004) 1 SCC 769**, held that a person in settled possession cannot be dispossessed even by true owner without taking recourse to law. Paragraph no. 6, 7, 8, 9 & 10 of the judgment in case of Ram Gowda (Supra) are quoted as under:

"6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and Ors. AIR 1924 PC 144, Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being Ramesh Chand Ardawatiya Vs. Anil Panjwani (2003) 7 SCC 350. In-between, to quote a few out of several, in Lallu Yeshwant Singh (dead) by his legal representative Vs. Rao Jagdish Singh and others (1968) 2 SCR 203, this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in Yar Mohammad Vs. Lakshmi Das (AIR 1959 All. 1,4):

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." (AIR p.5, para 13)

In the oft- quoted case of Nair Service Society Ltd. Vs. K.C. Alexander and Ors. (1968) 3 SCR 163, this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim 'Possessio contra omnes valet praeter eur cui ius sit possessionis (He that hath possession hath right against all but him that hath the very right)' and said, (AIR p. 1175, para 20)

"A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time".

In M.C. Chockalingam and Ors. Vs. V. Manickavasagam and Ors. (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In

Nagar Palika, Jind Vs. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of he cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re- instate himself provided he does not use more force than is necessary. Such entry will be viewed only as

resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' (SCC p.527, para 12)

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram and Ors.(supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in Horam Vs. Rex AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property.″

36. The facts of the present case as stated in the plaint are that the plaintiff has claimed himself to be in possession over the land in dispute. The plaintiff came in possession on the basis of a lease deed executed in his favour by the defendant/petitioner in the year 2019. Even if, there is defect in the grant of lease as contended by learned counsel for the petitioner, the fact remains the plaintiff/respondent is in possession over the land in dispute. In view of the law laid down by the Supreme Court in case of Rame Gowda (supra), the suit for relief No. 1 i.e. for grant of decree for prohibitory injunction restraining the defendant/petitioner from interfering with the possession of the plaintiff over the disputed land, is maintainable and cannot be said that such relief cannot be granted to the plaintiff in case, he is able to prove the

plaint allegations by leading cogent evidence in this regard.

37. So far as the contention of the defendant/petitioner that the second relief i.e. mandatory injunction directing the defendant in the suit to accept rent and issue receipts for the same and failing which the plaintiff may be permitted to deposit the rent in court, cannot be granted in view of provisions of Act of 2021, is concerned, is also misconceived and the suit as filed by the plaintiff/respondents cannot be dismissed in exercise of powers under Order 7 Rule 11 C.P.C. for two reasons. Firstly, as I have held above that provisions of Act of 2021 will not apply to a lease of open piece of land and secondly, even if assuming the said relief cannot be granted to the plaintiff/respondent, the plaint cannot be rejected under Order 7 Rule 11 C.P.C. for the reason that a plaint has to be rejected in totality and not in part. The Supreme Court in case of **Kum. Geetha, D/o Late Krishna & others v. Nanjundaswamy & others** passed in Civil Appeal No. 7413 of 2023 held in paragraph no. 11 & 12 as under:

"11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11,CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsud Ahmad v. Mathra Datt & Co, AIR 1936 Lahore 1021.This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd, (2018) 11 SCC 780, which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. (2019) 7 SCC 158. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the sa me against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial. ..

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...″

(emphasis supplied)

12. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.″

38. In view of the law laid down by Supreme Court and the facts of the present case, the suit for the relief No. 1 claim in the plaint is maintainable as held by me above, the plaint cannot be rejected even if, the relief No. 2 cannot be granted to the plaintiff.

39. Learned counsel for the petitioner relied upon judgment in case of **Mangleshwar Prasad Vs. State Of U.P. And 6 Others in Writ C No. 24877 of 2023** decided on 03.10.2023. The said judgment will not apply to the facts of the present case as in the said case, the prayer was made in the petition for quashing the lease deed. After considering the provisions of Sections 94 and 95 of the U.P. Revenue Code, 2006, this Court held that the validity of lease deed in view of the provisions contained under Sections 94 and 95 of the U.P. Revenue Code, 2006 as well as the U.P. Solar Energy Policy, 2022 cannot be examined in exercise of jurisdiction under Article 226 of the Constitution of India.

40. Counsel for the petitioner also relied upon judgment of this Court in case of **Ashik Ali Vs. Harigen in Second Appeal No. 439 of 1985 decided on 21.09.2015**. The said judgment has been given in a second appeal, which was filed after decision of the suit on merits. The suit in question was a suit for permanent injunction, which was dismissed by the trial court and the appeal filed by the plaintiff was allowed and the suit of the plaintiff was decreed. The second appeal filed before this Court was dismissed.

41. In the case in hand, this Court has to consider whether the application filed by the defendant-petitioner under Order 7 Rule 11 of the C.P.C. has been rightly rejected or not. Of course, the plea of jurisdiction as to whether the civil court or the revenue court will have the jurisdiction can always be decided after considering the evidence of the parties. Similarly, the plea that the suit is barred by statute can also be considered after evidence of the party.

42. As noted above, from the bare reading of the plaint, it cannot be said that the suit was barred either by the provisions of U.P. Revenue Code, 2006 or the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021.

43. In my view, the courts below have committed no illegality in rejecting the application filed by the petitioner under Order VII Rule 11 of C.P.C.

44. Consequently, the writ petition fails and is **dismissed**.

(2025) 9 ILRA 639
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 11075 of 2025

Dr. Sammohit @ Sammohit ...Petitioner
Versus
Raju Kumar Patel ...Respondent

Counsel for the Petitioner:
Harish Chandra Dwivedi

Counsel for the Respondent:

Issue for Consideration

Wheteher subsequent to the filing of the appeal, an application cannot be filed for condoning the delay, it has to be filed simultaneously along with memo of appeal?

Head Notes

The Code of Civil Procedure-1908-Order 41 Rule 3-A; The Constitution of India,1950-Article 227- From bare perusal of the Rule 3-A of the Order 41, it is manifest that the purpose and requirement of filing an application under Rule 3A along with a time barred appeal is mandatory in the sense that the appellant cannot without such an application being decided insist upon the court to hear his time barred appeal that this was the very purpose said to be above by insertion of Rule 3A, 1 & 2 which is clear from the legislative history of Rule 3A. No penalty of rejection or dismissal of a time barred appeal for non compliance of the requirement of Rule 3 A (1) is envisaged therein. Thus, when Rule 3A(1) neither expressly nor contextually indicates that its non compliance should, as a penalty, entail dismissal of the time barred appeal, its operation cannot be regarded as bringing above, such drastic result implidely-Petition dismissed.

Held- The argument made by the petitioner is of no avail as the application for condoning the delay can be filed subsequent to the filing of memo of appeal. (E-15)
(Para 9 & 11)

Case Law Cited

Collector, Varanasi v. Rai Prem Chand and others; AIR 1992 ALL 206; Padmavathi v. Kalu; AIR 1980 Kerala 173; Krishnasami Pandikonder v. Ramasami Chettiar; AIR 1917 PC 179 ; Sunderabai v. Collector of Belgaum; AIR 1918 PC 135; State of M.P. and another v. Pradeep Kumar and another; (2000) 7 SCC 372;

List of Acts

The Code of Civil Procedure-1908

List of Keywords

Delay condonation; Application can be filed subsequent to the filing of appeal; Order 41 Rule 3-A;

Case Arising From

Order dated 26.08.2025 passed by Additional District Judge/Special Judge, Court No. 4, Varanasi in Misc. Case No. 51 of 2025 whereby, the appellate court has allowed the application filed by the appellant for condoning the delay in filing the appeal

Appearances for Parties

Counsel for Petitioner(s) : Harish Chandra Dwivedi

(Delivered by Hon'ble Manish Kumar Nigam, J.)

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

2. This petition has been filed challenging the order dated 26.08.2025 passed by Additional District Judge/Special Judge, Court No. 4, Varanasi in Misc. Case No. 51 of 2025. By the order dated

26.08.2025, the appellate court has allowed the application filed by the appellant for condoning the delay in filing the appeal.

3. Contention of the learned counsel for the petitioner is that the respondent has not filed the application for condoning the delay along with memo of appeal and therefore, in view of the provisions of Order 41 Rule 3-A C.P.C., the appeal filed by the respondent is to be dismissed. It has also been contended by learned counsel for the petitioner that in case, an appeal is filed with delay, the same shall be accompanied by an application for condoning the delay in view of the provisions of Order 41 Rule 3-A C.P.C. It has been further contended that subsequent to the filing of the appeal, an application cannot be filed for condoning the delay, it has to be filed simultaneously along with memo of appeal. In this regard, learned counsel for the petitioner has relied upon the judgment of this Court in case of **Collector, Varanasi v. Rai Prem Chand and others; AIR 1992 ALL 206** as well as judgment of Kerala High Court in case of **Padmavathi v. Kalu; AIR 1980 Kerala 173**.

4. Before considering the submission, it will be appropriate to look into the brief facts of the case which are as under.

5. An ex-parte decree was passed on 17.08.2002 in a suit being O.S. No. 51 of 2001 (Dr. Sammohit v. Radheyshyam) for specific performance of an agreement to sell executed by father of the respondent. The said decree was executed by filing an execution application which was registered as execution case No. 32 of 2002. In the execution proceedings, sale deed was executed by the court on 15.07.2003. A restoration application was filed by the defendant/respondent under Order 9 Rule 13 C.P.C. on 13.10.2021 along with an application under Section 5 of Limitation Act for condoning the delay in filing the restoration application. The application filed under Section 5 of the Limitation Act for condoning the delay in filing the restoration application was rejected by the trial court by order dated 05.03.2024. Against the order dated 05.03.2024, the petitioner filed a revision on 12.03.2024. On objection being raised by the petitioner, the respondent moved an application for converting the revision into a misc. appeal and the said application was allowed by order dated 09.08.2024. After conversion of the revision into appeal, on an objection filed by the petitioner, the respondent filed fresh memo of appeal on 28.08.2024. Thereafter, on an objection being taken by the petitioner that appeal filed by the respondent was beyond time, the respondent filed an application under Section 5 of the Limitation Act for condoning the delay in filing the appeal on 23.09.2024. The said application has been allowed by the court below by the order impugned, hence the present writ petition.

6. It would also be appropriate to look into the relevant provisions before considering the argument of the learned counsel for the petitioner.

7. Order 41 Rule 3-A of C.P.C. is quoted as under:

"3A. Application for condonation of delay. *(1) When a appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.*

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1) the Court shall not made an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal."

8. Rule 3A has been added by Act of 104 of 1976.

9. Order 41 Rule 3-A(1) has been inserted to put an end to the practice of admitting an appeal subject to decision on the question of limitation. This practice was disapproved by the privy counsel in case of **Krishnasami Pandikonder v. Ramasami Chettiar; AIR 1917 PC 179** and **Sunderabai v. Collector of Belgaum; AIR 1918 PC 135**, which stressed the expediency of adopting a procedure under which a final determination of the question as to limitation would be possible before admission of the appeal. Therefore, with a view to seeing that the question of limitation does not remain lingering. Order 41 Rule 3A(1) has been inserted by Act of 104 of 1976. From bare perusal of the Rule 3-A of the Order 41, it is manifest that the purpose and requirement of filing an application under Rule 3A along with a time barred appeal is mandatory in the sense that the appellant cannot without such an application being decided insist upon the court to hear his time barred appeal that this was the very purpose said to be above by insertion of Rule 3A, 1 & 2 which is clear from the legislative history of Rule 3A. No penalty of rejection or dismissal of a time barred appeal for non compliance of the requirement of Rule 3A(1) is envisaged therein. Thus, when Rule 3A(1) neither expressly nor contextually indicates that its non compliance should, as a penalty, entail dismissal of the time barred appeal, its operation cannot be regarded as bringing above, such drastic result implidely.

10. Initially there was a divergence of opinion between various High Courts as to whether the application for condonation of delay can be filed subsequent to the filing memo of appeal or the application for condonation of delay must necessarily be filed along with memo of appeal. This controversy came to an end after the judgment of Supreme Court in case of **State of M.P. and another v. Pradeep Kumar and another; (2000) 7 SCC 372.** The Supreme Court held that filing of memo of appeal without an application for condonation of delay, will not be fatal, defect if any, can be cured by filing subsequent application for condonation of delay. Paragraph nos. 10, 11, 12 of the judgment in case of State of M.P. & another (supra) is quoted as under:

"10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is 1o be noted that there is no such rule prescribing for rejection of

memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without accompanying the application to condone delay the consequence cannot be fatal. The court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.

11. No doubt sub-rule (1) of Rule 3-A has used the word "shall". It was contended that employment of the word "shall" would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word "shall" in the context need be interpreted as an obligation case on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The rule cannot be interpreted very harshly and make the non-compliance punitive to appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application (explaining the delay) along with the appeal.

12. It is true that the pristine maxim "Vigilantibus Non Dormientiobus Jura Subveniunt" (Law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism "to err is human" is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the Court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine."

11. In view of the law laid down by the Supreme Court in case of State of M.P. & another (Supra), the argument made by learned counsel for the petitioner is of no avail as the application for condoning the delay can be filed subsequent to the filing of memo of appeal. Further in the facts and circumstances of the case, against the order rejecting an application under Section 5 of the Limitation Act filed for condoning the delay, in filing the application under Order 9 Rule 13 C.P.C., the respondent filed revision within time which on objection being taken by the petitioner, was converted into an appeal. On further objection being taken by the petitioner, the respondent filed a fresh memo of appeal in the aforesaid converted appeal. Thereafter, again, in order to meet the objection raised by the petitioner as to delay in filing the appeal, the respondent filed a separate application for condonation of delay which has been allowed by the court below.

12. In my view, revision was filed within seven days of the order passed rejecting the application under Section 5 of the Limitation Act. The said revision was subsequently converted into an appeal with

the leave of the court. Even otherwise, there is no delay in filing the appeal.

13. In view of the above, this petition lacks merit and is accordingly, **dismissed**.

(2025) 9 ILRA 643
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 13501 of 2023

Smt. Jyoti Singh ...Petitioner
Versus
Smt. Geeta Devi & Ors. ...Respondents

Counsel for the Petitioner:
Ashish Kumar Singh, Rakesh Kumar Srivastava

Counsel for the Respondents:
Dharnidhar Pandey, Kamal Kumar Singh, Ram Karan, Sudhir Kumar Mishra

Issue for Consideration

Whether the election petition liable to be rejected on the ground that the election petition was not presented by the respondent personally rather the same was presented through advocate and therefore, the election petition ought to have been rejected by the tribunal in view of the provisions of U.P. Zila Panchayat (Settlement of Dispute Relating to Membership) Rules, 1994

Head Notes

The Uttar Pradesh Zila Panchayat (Settlement of Dispute Relating to Membership) Rules, 1994, Sub Rule (3) of Rule 4, Rule 11; The Constitution of India,1950-Article 227; The Uttar Pradesh Kshetra Panchayat and Zila Panchayat Act, 1961-Section 27; The Code of Civil Procedure-1908-Section 26, Order IV; General Rules Civil, 1957-Rule 32 & 35-Once, the petition is filed through e-filing mode, the person filing the petition has no control over the petition as to when the same will be taken by the concerned Judge specially during the Covid period when the physical presence of litigants as well as lawyers was prohibited by the orders of this Court. After the submission of petition by the computer section it is only when the petition was taken by the District Judge and the District Judge fixed date 12.07.2021 as the date fixed and has also called for a report from the Munsarim. Thus, 12.07.2021 will be the date on which the petitioner was supposed to be present. In the present case, the petitioner was present on 12.07.2021 before the Munsarim as the Munsarim report bears signature of the petitioner and finding of fact has been recorded by the District Judge-Petition dismissed.

Held- Election petitioner was present on 12.07.2021 and there is sufficient compliance of Sub-rule (3) of Rule 4 of the Rules,1994 specially considering the circumstance that Covid pandemic was there in full swing in the year 2021 and certain restrictions were imposed by this Court regarding the presence of litigant and counsel in the court proceedings- No illegality has been committed by the court below in rejecting the application filed by the petitioner under Order 7 Rule 11 C.P.C. for rejection of the election petition. (E-15)
(Para 29,31 & 32)

Case Law Cited

Devendra Yadav v. District Election Officer/District Magistrate, Mau reported in 2011 (9) ADJ 219; Jamal Uddin Ahmad v. Abu Saleh Najmuddin and others reported in (2003) 4 SCC 257; Sumitra Devi v. Special Judge/Additional District & Sessions Judge & others (Misc. Single No. 9920 of 2018 decided on 12.06.2020)

List of Acts

The Uttar Pradesh Zila Panchayat (Settlement of Dispute Relating to Membership) Rules; The Constitution of India,1950; The Uttar Pradesh Kshetra Panchayat and Zila Panchayat Act, 1961; The Code of Civil Procedure-1908; General Rules Civil, 1957

List of Keywords

Sub-rule (3) of Rule 4 of the Rules,1994; Petition not presented by the respondent personally; Order VII Rule 11; Election petition

Case Arising From

Order dated 14.12.2023 passed by District Judge, Basti in Election Petition No. 1 of 2022 rejecting the application filed by the petitioner under Order 7 Rule 11 C.P.C. for rejection of the election petition.

Appearances for Parties

Counsel for Petitioners(s) : Ashish Kumar Singh, Rakesh Kumar Srivastava

Counsel for Respondent(s) : Dharnidhar Pandey, Kamal Kumar Singh, Ram Karan, Sudhir Kumar Mishra

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard Shri Ashish Kumar Singh and Shri Rakesh Kumar Srivastava, learned counsel for the petitioner, Shri Dharnidhar Pandey, Shri Kamal Kumar Singh, Shri, Ram Karan, Shri Sudhir Kumar Mishra, learned counsel for the respondents and perused the record.

2. This petition has been filed challenging the order dated 14.12.2023 passed by District Judge, Basti in Election Petition No. 1 of 2022 rejecting the application filed by the petitioner under Order 7 Rule 11 C.P.C. for rejection of the election petition.

3. Brief facts of the case are that election for the post of member of Zila Panchayat was held on 29.04.2021. Counting was done on 02.05.2021. The petitioner contested the election for member of Zila Panchayat for Ward No. 41 and in the counting held on 02.05.2021, the petitioner was declared elected as member from Ward No.41. Respondent no. 1 also contested the election for Ward No. 41 but was unsuccessful. Respondent no. 1 filed election petition no. 1 of 2021 under Section 27 of U.P. Kshetra Panchayat and Zila Panchayat Act, 1961 (hereinafter referred to as the "Act of 1961") before the judge as provided under Section 27 of the Act of 1961 on 30.06.2021. After being noticed, the petitioner filed application (Paper No. 73 Ga 2) for rejection of election petition on the ground that the election petition was not presented by the election petitioner/respondent no. 1 personally. The petitioner also filed another application (Paper No. 130 Ga 2) and prayed that the order dated 13.07.2022 passed by the election tribunal be reviewed/recalled. From the facts as brought on record in the present writ petition, it is apparent that election petition was filed through virtual mode on 30.06.2021. On 30.06.2021, following order was passed:

आज यह चुनाव याचिका की पत्रावली कम्प्यूटर अनुभाग से प्राप्त हुई।

<u>आदेश</u>

ग्राह्यता के बिन्दु पर सुनवाई हेतु पत्रावली पेश हुई। आवेदिका की तरफ से कोई उपस्थित नहीं है।

पत्रावली ग्राह्यता के बिन्दु पर सुनवाई हेतु दिनांक02.07.2021 को पेश हो। नियत तिथि तक मुंसरिम अपनी आख्या प्रस्तुत करें।"

4. On 12.07.2021, following order was passed by the District Judge, Basti/Election Tribunal:

"Case called out. Learned counsel for the applicant is present.

Heard and perused the report of Sadar Munsarim. As per report of Sadar Munsarim, this election petition is time barred by 25 days. Application paper no. 7c/2 along with affidavit paper no. 8c/2 has been moved by the applicant u/s 5 Limitation Act to condone the delay in filing the election petition.

Register as civil misc. case. Issue notice to O.Ps. Steps be taken within a week. Put up on 26.07.2021 for objection and disposal of application paper no. 7c/2."

5. On 12.07.2021, Munsarim submitted its report mentioning therein that the petition has been filed with delay of 25 days. Munsarim report dated 12.07.2021 is quoted as under:

आख्या

श्रीमान जी,

प्रस्तुत चुनाव याचिका अन्तर्गत धारा 27 (2) (ए) (बी) उ०प्र० क्षेत्र पंचायत एवं जिला पंचायत अधि० 1961 सपठित रूल-4 उ०प्र०जिला पंचायत/सेटिमेन्ट आफ डिस्प्यूट्स रिलेटिंग टू मेम्बरशिप रूल्स 1994, श्री बाल कृष्ण चौधरी एडवोकेट द्वारा प्रस्तुत किया गया। चुनाव याचिका इस न्यायालय के अधिकार सीमा क्षेत्र के अन्तर्गत पर्याप्त न्याय शुल्क व आदेशिका शुल्क सहित 25 दिन मियाद बाहर दाखिल है। प्रार्थनापत्र अन्तर्गत धारा-5 मियाद अधिनियम दिया गया है।

चालान फार्म से सेक्योरिटी मनी मु0 250/- जरिए चालान जमा कर चालान फार्म दाखिल किया गया है। श्री बाल कृष्ण चौधरी एडवोकेट का वकालतनामा दाखिल है। मुसन्ना पर्याप्त है।

सादर

समर्थित ह०अस्पष्ट प्रशासनिक

अधिकारी

दिनांक 12.07.2021"

6. Thereafter, several dates were fixed and on 13.07.2022, the Munsarim report was rejected by the District Judge, Basti/Election Tribunal relying upon the orders passed by the Supreme Court. The order dated 13.07.2022, is quoted as under:

"***दिनांक 13.07.2022***

पत्रावली पेश हुई। पुकार करायी गयी। उभय पक्ष के विद्वान अधिवक्ता उपस्थित। उभय पक्षों को, मुंसरिम आख्या व आपत्ति प्रलेख संध्या 49ग2 पर सुना गया।

याचिनी के विद्वान अधिवक्ता द्वारा मुंसरिम आख्या पर आपत्ति प्रलेख संख्या 49 ग 2 प्रस्तुत कर मुंसरिम आख्या दिनांकित 12.07.2021 को निरस्त किये जाने की याचना किया गया है एवं याचिनी के अधिवक्ता द्वारा प्रलेख संख्या 54ग1/1 लगायत 54 ग1/22, माननीय उच्चतम न्यायालय में योजित प्रकीर्ण प्रार्थना पत्र संख्या 665/2021 SMW (C) No. 3/2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION में पारित आदेश की छाया प्रति दाखिल किया गया है।

माननीय उच्चतम न्यायालय के उक्त आदेश के आलोक में याचिनी द्वारा प्रस्तुत आपत्ति प्रलेख संख्या 49ग2 स्वीकार

करते हुए, मुसरिम आख्या दिनांकित 12.07.2021 निरस्त किया जाता है

अतएव मुंसरिम को आदेशित किया जाता है कि माननीय उच्चतम न्यायालय के उक्त निर्णय के आलोक में पुनः अपनी आख्या प्रस्तुत करे। पत्रावली मुंसरिम आख्या के साथ वास्ते सुनवाई दिनाँक 15.07.2022 को पेश हो।

जनपद न्ययाधीश

बस्ती।"

7. By order dated 14.12.2023, the District Judge, Basti/Election Tribunal has rejected the applications filed by the petitioner being application No. 73 Ga 2 and 130 Ga 2 for rejecting the election petition, hence, the present petition.

8. It has been contended by learned counsel for the petitioner that the election petition was not presented by the respondent no. 1 personally rather the same was presented through advocate and therefore, the election petition ought to have been rejected by the tribunal in view of the provisions of Sub Rule (3) of Rule 4 of U.P. Zila Panchayat (Settlement of Dispute Relating to Membership) Rules, 1994, (hereinafter referred to as the "the Rules, 1994").

9. Per contra, learned counsel for the respondents submitted that the election petition was presented during the Covid-pandemic period and because of the Covid restrictions, the petition could have been filed through e-filing mode. In the present case, the petition has been filed through e-filing mode and at the time when the petition was entertained by the tribunal i.e. on 12.07.2021, the petitioner was present and therefore, it cannot be said that the provisions of Sub-rule (3) of Rule 4 of the Rules, 1994 has not been complied with. Learned counsel for the respondent has invited attention of this Court to the order dated 30.06.2021 passed by the tribunal which has been quoted above and relied upon the endorsement made before the order that "आज यह चुनाव याचिका की पत्रावली कम्प्यूटर अनुभाग से प्राप्त हुई।" On 30.06.2021, the petition was directed to be put up for admission on 12.07.2021 along with Munsarim report. Learned counsel for the respondent further submitted that on 12.07.2021, the petitioner was present along with his counsel before the Munsarim who has submitted the report on 12.07.2021 and therefore there is sufficient compliance of Sub-rule (3) of Rule 4 of the Rules, 1994.

10. Learned counsel for the petitioner submitted that as per the law laid down by this Court in case of **Devendra Yadav v. District Election Officer/District Magistrate, Mau** reported in **2011 (9) ADJ 219**, the petitioner has to be personally present before the tribunal/judge at the time of presentation of the election petition and has further submitted that even assuming (though not admitted), respondent no. 1 was present before the Munsarim will not be in compliance of the Sub-rule (3) of Rule 4 of the Rules, 1994. Learned counsel submitted that according to Section 27 of the Act of 1961 read with Sub-rule (3) of Rule 4 of the Rules, 1994, the petition is to be presented before the Judge personally by the election petitioner. Learned counsel for the petitioner further submitted that on 12.07.2021 it has been mentioned by the tribunal that "case called out. Learned counsel for the applicant is present" which is indicative of fact that the petitioner was not present before the court

when the matter was taken up by the tribunal. It has also been submitted by learned counsel for the petitioner that presence of election-petitioner (though not admitted) before the Munsarim will not be in compliance of Sub-rule 3 of Rule 4 of the Rules, 1994. Presentation of election petition before the Munsarim will not be proper proper presentation of the election petition as the Munsarim has only to perform certain ministerial function such as giving report etc. the presentation is only to be made before Judge personally.

11. Learned counsel for the respondent submitted that according to Section 27 of the Act of 1961, dispute if any regarding election shall be referred to Judge. Sub-rule (3) of Rule 4 of the Rules, 1994 only requires that the election petition has to be presented personally. It does not in so many words mentions that election petition has to be presented before the Judge personally. Learned Counsel for the respondent further submitted that as per Rule 11 of the Rules, 1994, procedure provided in C.P.C. regarding suits will be followed in election petition, if the same is not inconsistent with Act of 1961 or Rules of 1994. Election petition can be validly presented before the Munsarim in view of the provision of C.P.C. and General Rule Civil, 1957 for presentation of suits. The election petition presented in person before Munsarim will be in sufficient compliance of the Sub-rule (3) of Rule 4 of the Rules, 1994.

12. Before considering the rival submissions, it is relevant to note the relevant provisions of the statute regarding the election petition.

13. Section 27 of the Act of 1961 provides for resolution of dispute as to the membership and disqualification. Section 27 of the Act of 1961 is quoted as under:

"27. Disputes as to membership or disqualification. *(1) If any dispute arises as to whether a particular person is a member of the Zila Panchayat under [clause a] [Substituted by U.P. Act No. 9 of 1994.] of Section 18, the dispute shall be referred in the manner prescribed to the State Government and the decision of the State Government shall be final and binding.*

(2) If a dispute arises as to whether a person –

(a)has been lawfully chosen [x x x] [Omitted by U.P. Act No. 9 of 1994.] a member of a Zila Panchayat under Section 18; or

(b)has ceased to remain eligible for being chosen [x x x] [Omitted by U.P. Act No. 9 or 1994.] a member [x x x] [Omitted by Section 17(2) of U.P. Act No. 2 of 1963.] of the Zila Panchayat for the purposes of Section 20, or

(c)has become disqualified to be Adhyaksha or [x x x] [Omitted by U.P. Act No. 44 of 2007 (w.e.f. 20.08.2007).] for the purposes of Section 19, the dispute shall be referred in the manner prescribed to the Judge whose decision shall be final and binding."

14. Section 27 provides that dispute shall be referred in the manner prescribed to the judge whose decision shall be final and binding. The procedure for filing the election petition has not been prescribed by the Act of 1961. The State of U.P. has framed rules in exercise of powers under Section 237 of the Act of 1961 read with Sub-section (1) and Clauses A & B of Sub-section (2) of Section 27 of the Act 1961, namely, U.P. Zila Panchayat (Settlement of Dispute Relating to Membership) Rules,

1994. Rule 4 of the Rules, 1994 provides for manner of raising dispute as to whether a person has lawfully chosen as member of Zila Panchayat. Rule 4 of the Rules, 1994 is quoted as under:

*"**4. Manner of raising disputes under Section 27(2)(a) and (b)-** (1) if a dispute arises as to whether a person has been lawfully chosen under clause (b) of sub-section (1) of Section 18 the matter shall be referred by means of a written petition by any person who could legally be a candidate at such choosing to the Judge within thirty days of the date of choosing.*

(2) If a dispute arises as to whether a person has ceased to remain eligible for being chosen a member, the matter shall in the manner as provided in sub-rule(1) be raised by any person whose name is registered as an elector in the Electoral roll for the territorial constituency of the concerned Zila Panchayat.

(3) Every petition under sub-rule (1) or sub-rule (2) shall be presented in person by the petitioner, and if there are more than one petitioners by any or all of them."

15. Rule 11 of the Rules,1994 provides for procedure for hearing of election petition. Rule 11 of the 1994 Rules is quoted as under:

***"11. Procedure before the Judge.** (1) Except so far as provided by the Act or in these Rules, the procedure provided in Civil Procedure Code, 1908 in regard to suits shall in so far as it is not inconsistent with the Act or any provisions of these rules and it can be made applicable, be followed in the hearing of the petitions:*

Provided that-

(a) any two or more petitions to the membership of the same person may be heard together;

(b) the Judge shall not required to record the evidence in full but shall make a memorandum of the evidence sufficient in his opinion for the purpose of deciding the case;

(c) the Judge may, at any stage of the proceedings; require the petitioner to give further cash security for the payment of the costs incurred or likely to be incurred by any respondent;

(d) for the purpose of deciding any issue, the Judge shall only be bound to order production of or to receive only so much evidence; oral or documentary as he considers necessary; and

(e) any person aggrieved from the decision of the Judge may apply for review to the Judge within 15 days from the date of the decision and the Judge may thereupon review the decision.

(2) The provisions of the Indian Evidence Act, 1872 (Act No. 1 of 1872) shall, subject to the provisions of the Act and these rules, be deemed to apply in all respects in the proceedings for the disposal of the petition."

16. Sub-rule (3) of Rule 4 of the Rules, 1994 provides that every petition under Sub-rule (1) & sub-rule (2) shall be presented in presence of petitioner (election petition) and if there are more than one petitioner, by any one or by all of them. The Rules, 1994 do not provide the manner in which the election petition or the authority before whom the election petition has to be presented. Rule 11 of the Rules, 1994 provides that the procedure provided in the Civil Procedure Code, 1908 with regard to the suits in so far as it is not inconsistent with the Act or any provision of these Rules and will be applicable and

followed in the hearing of the petition. According to the Rule 11, the tribunal has to follow the procedure as prescribed by the C.P.C. for trial of suits except for otherwise provided by Act of 1961 or the Rules, 1994.

17. Section 26 of the C.P.C. provides for institution of a suit which is quoted as under:

*"**26. Institution of suits.-** (1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed."*

18. Order 4 C.P.C. provides that commencement of suits by presentation of plaint. Order 4 of the C.P.C. is quoted as under:

"ORDER IV
INSTITUTION OF SUITS

***1. Suit to be commenced by plaint-**(1) Every suit shall be instituted by presenting a plaint in duplicate to the court] or such officer as it appoints in this behalf.*

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

***2. Register of suits**-The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted."*

19. Rule 35 of General Rules Civil, 1957 provides for Munsarim's duty in respect of plaints, which is quoted as under:

*"**35. Munsarim's duty in respect of plaints.-** A Munsarim of a civil court appointed to receive plaints shall examine each plaint presented to him, and shall report thereon whether the provisions of the Code and the Court-fees Act, have been observed, [*] [The word 'and' deleted by Notification No. 396/VIII-b-203, dated 2-9-1971 (w.e.f. 30-7-1977).] whether the claim is within the jurisdiction of the court, constitutes a cause of action, and has been presented within the period prescribed for the institution of such a suit, [and whether the plaint is otherwise in proper form including that in a suit whether a notice under Section 80, C.P.C., necessary, such a notice has been given.] [Inserted by Notification No. 396/VIII-b-203, dated 2-9-1971 (w.e.f. 30-7-1977).]*

The Munsarim shall see that the actual date of the presentation of the plaint is entered upon the impressed stamp and adhesive label, if any, below the date of purchase endorsed on them.

On the back of all plaints the Munsarim shall note-

(a)date of presentation of the plaint;

(b)name of presenter;

(c)classification of suit; and

(d)court-fee paid."

20. It is also relevant to quote Rule 32 of the General Rule Civil which provides time for presenting application and the same is quoted as under:

***"32.Time for presenting applications**.- Except as otherwise provided by these rules, applications and petitions which can be presented to the Munsarim of a court shall be received on any day other than an authorised holiday between 10.30 a.m. and such hour as may be fixed by the court: Provided that an*

application or petition presented after such hour and before 4 p.m. may be received on the ground, if any, of limitation or other urgent reason. Presiding Officers when accepting plaints or applications after court-hours will note on such papers the time of their presentation.″

21. Normally, as per C.P.C. and the General Rule Civil, 1957 framed in this regard, suit is presented during regular court hours on a working day before the Musnsarim who is authorized to receive the plaints and has been given duty to examine the plaint as provided under Rule 35 of the General Rule Civil, 1957. Except in cases covered under Rule 32 of the General Rule Civil,1957 where the plaint or petition is presented after normal working hours i.e. 10:30 A.M. to 04:00 P.M., may be received on the ground, if any of the limitation or other urgent reason, by the Presiding Officer and on accepting the plaint or application after the court hours and Presiding Officer will note on such papers and mention the time of presentation of the application/plaint. Thus, from the combined reading of the Rule 35 read with Rule 32 of the General Rule Civil, 1957 it is apparent that normally, during the courts hours, the plaint or petition is to be presented before the Munsarim and only in case of urgency or last day of limitation, the petition may be presented before the Presiding Officer who shall note time of presentation, if he accept the same.

22. According to the petitioner, on combined reading of Section 27 of Act of 1961 and Rule 4 of the Rules, 1994, the election petition has to be presented before the Judge. The Judge has been defined under Sub-section 24 of Section 2 as District Judge and includes any other sub-ordinates Civil Judicial Officer named or designated by the District Judge in this behalf.

23. It has been contended by learned counsel for the petitioner that while interpreting special statute which is a self contained code, the court must consider the intention of the legislature. The reason for this fidelity towards the legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly constructed. It has been further contended that the election petition being special remedy as provided under the statute and for the same procedure has been prescribed in the Rules,1994 and in view thereof the petition has to be presented before the Judge and not before the Munsarim taking aid of the provisions of C.P.C. read with General Rule Civil, 1957.

24. The election tribunal cannot entertain an election petition which is not presented before a Judge personally by the election petitioner but has been presented before the Munsarim as per the procedure provided under the C.P.C. Consequently, the presence of petitioner before the Munsarim on 12.07.2024 when the report was submitted by the Munsarim, is of no avail and is also against the mandate of Sub-rule (3) of Rule 4 of the Rules, 1994.

25. Learned counsel for the respondent has submitted that in case, presentation has been made in conformity with the procedure prescribed by the C.P.C., and General Rule Civil, 1957, no exception can be taken to its validity because a suit has to be presented before the Munsarim on a working day between the court hours, the presence of election petitioner before the Munsarim at the time of presentation will suffice the

requirement of Sub-rule (3) of Rule 4 of the Rules, 1994.

26. The argument as made by learned counsel for the petitioner, prima-facie appears to be very attractive but in view of law laid down by the Supreme Court in case of **Jamal Uddin Ahmad v. Abu Saleh Najmuddin and others** reported in **(2003) 4 SCC 257**, has no substance. Identical argument was raised in case of Jamal Uddin Ahamd (Supra) before the Supreme Court in a matter arising from an election petition filed before the Guwahati High Court wherein as per the Rules of the Court, the election petition was presented before the Registry and the objection was taken by the elected candidate that the petition was to be presented as per the Representation of Peoples Act before the High Court, meaning thereby the presentation has to be made either before the Chief Justice or before a Judge designated for the purpose of hearing the election petition and could not be validly presented before the Registry as per the High Court Rules. Contention was repelled by the Supreme Court in case of Jamal Uddin Ahamd (Supra) and has held in paragraph no. 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 & 19, which are quoted as under:

"6. Developing their submissions further, the learned counsel appearing for the appellants submitted that an election petition has to be presented to the High Court. Under Articles 214 and 216 of the Constitution, there shall be a High Court for each State and every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. The Constitution and the Act do not provide for or specify the person to whom an election petition can be presented, and therefore, an election petition should be presented either to the High Court as defined by Articles 214 and 216 of the Constitution or at least to the Chief Justice or to the Judge designated by the Chief Justice as the Election Judge. In any case, the presentation of an election petition to the Stamp Reporter is wholly unwarranted and unsupportable in law. The High Court does not have jurisdiction to entertain and decide on merits a petition which has been presented to a Stamp Reporter, the presentation itself being a nullity.

8. It was submitted on behalf of the respondents that the presentation having been made in conformity with the Rules, no exception can be taken to its validity. To this the learned counsel for the appellants replied by submitting that the only provision which empowers the rules being framed under the Act is contained in Section 169, which contemplates the rules for carrying out the purposes of the Act being made by the Central Government after consulting the Election Commission and by notification in the official gazette. Inasmuch as the Central Government has not framed any rules governing the presentation of election petition the rules framed by the High Court are invalid and cannot be given effect to or looked into for saving the validity of its presentation. It was also submitted that the right to contest for and hold an elective office is not a common law right but a right conferred by the Statute and so also the resolution of election disputes is not a common law remedy governed by ordinary law of the land; it is a special statutory remedy provided for by a special enactment, and therefore, any departure from the provisions of the Constitution or the Act cannot be countenanced. The Court would always be slow to interfere with the success of a winning candidate at the election and

an election petition which does not strictly comply with the requirements as to its presentation shall be liable to be dismissed and thrown out by strictly interpreting the law.

9. The question which arises for decision is whether the High Court is at all competent to frame rules making provision for receiving the election petitions presented to the High Court under Section 81 of the RPA; and if the High Court is not competent to frame the rules, then whether in the absence of any provision in the Act or rules framed by the Central Government specifying the person who is competent to receive election petitions presented to the High Court, no petition can be presented; or, so long as there is no specific provision can it be inferred by reading Article 329 with Articles 214 and 216 of the Constitution that the election petition can be presented only to the High Court in the sense of the Chief Justice and other judges constituting the High Court for the time being sitting together to receive the election petition.

10. In our opinion, the controversy which has been raised is devoid of any merit. It is pertinent to note that in the RPA as originally enacted an election petition could be presented to the Election Commission and thereafter it was to be tried by an Election Tribunal. Act No.47 of 1966 has drastically amended chapter II of RPA and with effect from 14.12.1966 the jurisdiction to try election petitions has been conferred on the High Court. High Court is a Court which was pre-existing on the date of amendment brought into being by Act No.47 of 1966. It is a constitution Court and a Court of record having plenary jurisdiction.

12. Undoubtedly clause (b) of Article 329 of the Constitution speaks of an election petition being presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. The Representation of the People Act, 1951 is such law made by the Parliament. Section 80A of the Act confers jurisdiction to try an election petition upon the High Court. By no stretch of imagination it can be said that the "presentation" of an election petition is part of the "trial" of an election petition. Section 81 of the Act prescribes limitation, the manner and requirements of presentation and that the election petition may be presented to the High Court. The term "High Court" in Section 81 has been used to denote an institution and not literally the High Court as constituted within the meaning of Article 216 of the Constitution. It would be an absurdity to assume that even though the election petition can be tried by a single Judge of the High Court in so far as presentation is concerned it must be to the "High Court" in the sense of the High Court consisting of a Chief Justice and other Judges appointed to the High Court (as contemplated by Article 216), i.e. presented to the Chief Justice and all the Judges sitting together. It is equally absurd to assume that a single Judge assigned or to be assigned with the trial of an election petition must himself receive the election petition. A Judge of the High Court may be designated as an Election Judge and assigned the trial of an election petition subsequent to its being received in the High Court. It may be that the Chief Justice has not designated an Election Judge under sub-Section (2) of Section 80A of the Act until an election petition was actually received in the High Court. Who then would receive the election petition? Do the Constitution and the RPA expect the Chief Justice himself to discharge the ministerial act of receiving

an election petition presented to the High Court? Our answer is an emphatic 'no'.

13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the judges as per the rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be 'delegation' as also there can be 'authorization' in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and or behalf of the Court so as to aid the judges in discharge of the judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post- decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength. The Judges rarely receive personally any document required to be presented to the Court. Plaints, petitions, memoranda or other document required to be presented to the Court are invariably received by the administrative or ministerial staff, who would also carry out preliminary scrutiny of such documents so as to find that they are in order and then make the documents presentable to the judge, so that the valuable time of the Judge is not wasted over such matters as do not need to be dealt with personally by the Judge.

14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorization.

"The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the state sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature

may be, which are performed by administrators; and administrators are all state officials who are neither legislators nor judges"

(See Constitutional and Administrative Law, Philips and Jackson, Sixth Edition, p. 13). P. Ramnath Aiyer's Law Lexicon defines Judicial Function as the doing of something in the nature or in the course of an action in court, (p. 1015). The distinction between "Judicial" and "Ministerial Acts" is:

"if a judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially." (p. 1013-14).

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights and obligations of the parties. There is duty to act judicially. The judge may construe the law and apply it to a particular state of facts presented for the determination of controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done (Law Lexicon, Ibid., p. 1234). In ministerial duty nothing is left to discretion; it is a simple, definite duty. Presentation of election petition to the High Court within the meaning of Section 81 of the Act without anything more would mean delivery of election petition to the High Court through one of its officers competent or authorized to receive the same on behalf of and for the High Court. Receiving an election petition presented under Section 81 of the Act is certainly not a judicial function which needs to be performed by a judge alone. There is no discretion in receiving an election petition. An election petition, when presented , has to be received. It is a simple, definite duty. The date and time of presentation and the name of person who presented (with such other particulars as may be prescribed) are to be endorsed truly and mechanically on the document presented. It is a ministerial function simplicitor. It can safely be left to be performed by one of the administrative or ministerial staff of the High Court which is as much a part of the High Court. It may be delegated or be performed through someone authorized. The manner of authorization is not prescribed.

15. The High Court, in authorizing an official to receive an election petition either by collective decision of all the Judges or under the directions of the Chief Justice of the High Court, does not 'delegate' any of its functions much less a judicial function; it merely 'authorizes' an official to do an act incidental to the main judicial functional of trial of an election petition which is entrusted to the High Court exercisable ordinarily by a single Judge of the High Court assigned by the Chief Justice for that purpose. Such authorization whether made by rules of the High Court or by decision of the Court or by an order of the Chief Justice shall hold good unless there be a provision to the contrary in the Act or in the rules framed by the Central Government in exercise of the powers conferred by Section 169 of the Act, which there is none.

16. It is not disputed that the Stamp Reporter is an official in the Gauhati High Court and a necessary part of the administrative staff performing functions of

utility and responsibility in the administrative set up.

17. It will be useful to notice how Section 81 read prior to its amendment by Act No. 47 of 1966. The provision as originally contained in the Representation of Peoples Act, 1951 read as under:-

"81. Presentation of petitions.-(1) An election petition calling question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and section 101 to the Election Commission by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.-In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) An election petition shall be deemed to have been presented to the Election Commission-

(a) when it is delivered to the Secretary to the Commission or to such officer as may be appointed by the Election Commission in this behalf-

(i) by the person making the petition, or

(ii) by a person authorized in writing in this behalf by the person making the petition; or

(b) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

18. Sub-Section (1) of the above said provision required the election petition being presented to the Election Commission. Sub-Section (2) provided for the election petition being delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission or even being sent by registered post and delivered to the Secretary to the Commission or the officer appointed so as to be deemed to have been presented to the Election Commissioner. While "High Court" has been substituted in place of Election Commission in sub-Section (1), sub-Section (2) of the erstwhile Section 81 has been deleted without re-enacting a corresponding provision. The reason is more that obvious. The Parliament knew that so far as the Election Commissioner is concerned, it was considered necessary to trust only the Secretary to the Commission or such other officer as may be appointed by the Election Commission entrusted with the responsibility of receiving the election petition presented to the Election Commission. So far as the High Court is concerned, such a provision was not required to be enacted into the Act. Jurisdiction to try an election petition has been conferred on the High Court in place of the Election Tribunal. The High Court is a constitutional Court which was pre-existing. It is a Court of record and exercises plenary powers. The High Court being a pre-existing judicial institution also had rules, directions and practice already existing and prevalent and governing the reception of documents presented to it; the same would apply to election petitions. Cursus curiae est lex curiae- The practice of the Court is the law of the Court. Every

Court is the guardian of its own records and the master of its own practice; and where a practice has existed, it is convenient, except in cases of extreme urgency and necessity, to adhere to it, because it is the practice, even though no reason can be assigned for it; for an inveterate practice in law generally stands upon principles that are founded in justice and convenience. (See Broom's Legal Maxims, Tenth Edition, p. 82). Even in the absence of Chapter VIII-A In the Gauhati High Court Rules there would have been nothing wrong in the High Court or the Chief Justice authorizing any of its officers to receive the election petition presented to it so as to enable exercise of the jurisdiction conferred on the High Court by Chapter II of the Act. The Gauhati High Court thought it proper to incorporate Chapter VIII-A in its Rules in view of the amendment made in Chapter II of the Act.

20. We are therefore of the opinion that presentation of an election petition to the Stamp Reporter of the High Court of Gauhati is a valid presentation. Such has been the view taken by the High Court of Gauhati consistently. At least three decisions can be referred to immediately: Abdul Jabbar v. Syeda Anwara Taimur and Ors., (1986) 1 GLR 257, Shri Melhupra Vero v. Shri Vamuzo, (1990) 1 GLR 290 and Shri Saingura v. Shri F. Sapa and Ors., (1990) 2 GLR (NOC) 48. So is the view taken by the High Court of Allahabad in Nawab Khan v. Vishwanath Shastri, AIR (1993) Allahabad 104. We find ourselves in agreement with the view so taken by the learned single judges of Gauhati and Allahabad High Courts."

27. In view of the law laid down by the Supreme Court in case of Jamal Uddin Ahmad (Supra) the election petition has to be presented as per the provisions of C.P.C. read with General Rule Civil before the Munsarim and not before the District Judge or any sub-ordinate Judge who is authorized to hear the election petition and therefore, presence of the election petitioner before the Munsarim would be in sufficient compliance of Sub-rule (3) of Rule 4 of the Rules,1994. The Full Bench decision of this Court in Case of **Sumitra Devi v. Special Judge/Additional District & Sessions Judge & others** (Misc. Single No. 9920 of 2018 decided on 12.06.2020), at page no. 9 of the judgment, the Full Bench of this Court has expounded as under:

"However, the words "presented by any candidate' are significant. The word "presented' is derived from the word "present'. It conveys an act of presentation. One of the meaning assigned in the Chamber's dictionary (1993 Edition) to the word "present', which appears apposite in the context of Section 12-C(3), is, to give, or furnish, specially formally or ceremonially; to deliver, convey or handover. Thus, the word 'presented' conveys an act of giving, filing or delivering, in the case of an election petition. The word "present' has been defined by the Oxford English Dictionary (Second Edition, 2014) to mean, the act of giving something to somebody especially at a formal ceremony."

28. The presentation of plaint (election petition) is completed at that very moment when it was given/produced/ furnished/ delivered before the authority competent in the manner as prescribed by the C.P.C. as the provisions of C.P.C. are applicable in view of the Rule 11 of 1994 Rules.

29. Learned counsel for the petitioner further contended that from the order sheet,

it is apparent that election petition was presented on 30.06.2021 and on 30.06.2021, nobody was present on behalf of the election petitioner and therefore, the court has fixed 12.07.2021 as the date fixed in the matter and has also been directed the Munsarim to submit its report on the date fixed. It has been further contended by learned counsel for the petitioner that presence of the petitioner on 12.07.2021 even before the Munsarim will not constitute a valid compliance of Sub-rule (3) of Rule 4 of the Rules,1994 as the petitioner was absent on 30.06.2021 as noted by the District Judge in its order dated 30.06.2021. This contention of the learned counsel for the petitioner is also misconceived for the reason that from the order sheet, it is clear that the petition was received from computer section by the District Judge, meaning thereby that the petition was filed through e-filing mode and after the filing of the petition through e-filing mode, the same was placed before the District Judge on 30.06.2021. Once, the petition is filed through e-filing mode, the person filing the petition has no control over the petition as to when the same will be taken by the concerned Judge specially during the Covid period when the physical presence of litigants as well as lawyers was prohibited by the orders of this Court. After the submission of petition by the computer section it is only when the petition was taken by the District Judge and the District Judge fixed date 12.07.2021 as the date fixed and has also called for a report from the Munsarim. Thus, 12.07.2021 will be the date on which the petitioner was supposed to be present. In the present case, the petitioner was present on 12.07.2021 before the Munsarim as the Munsarim report bears signature of the petitioner and finding of fact has been recorded by the District Judge in the order impugned, which is quoted as under:

"इसी क्रम में मेरे द्वारा मुंसरिम आख्या दिनांकित 12-07-2021 का अवलोकन किया गया, जिसमें यद्यपि मुंसरिम द्वारा यह नहीं लिखा गया कि आवेदिका व्यक्तिगत रूप से उपस्थित है, किन्तु यह भी उल्लेखनीय है कि उक्त आख्या में कहीं पर भी यह भी नहीं लिखा कि याचिनी उपस्थित नहीं है जबकि याचिनी दिनांक 12-07-2021 को याचिका के पुस्त पर अपना हस्ताक्षर करती है। "ऐसी स्थिति में उसकी उपस्थिति पर प्रश्नचिन्ह नहीं लगाया जा सकता है।"

30. The District Judge has also recorded a finding of fact in the order impugned which is quoted as under:

"मेरे द्वारा याचिका के प्रथम पृष्ठ के पुश्त पर लिखित तथ्यों का अवलोकन किया गया।

उपरोक्त प्रथम पृष्ठ के पुस्त पर श्रीमती गीता देवी के हस्ताक्षर तथा उस हस्ताक्षर की तसदीक श्री बालकृष्ण चौधरी द्वारा किया जाना दर्शित है, जो दिनांक 12-07-2021 को किया गया है।

कहने का तत्पर्य यह है कि दिनाँक 12-07-2021 को याचिका की ग्राह्यता हेतु याचिका नियत की गयी और तद् दिनांक को याचिका के पुश्त पर गीता देवी के हस्ताक्षर उनके विद्वान अधिवक्ता द्वारा प्रमाणित है जो यह दर्शित करता है कि याचिनी दिनांक 12-07-2021 को उपस्थित थी।"

31. From these finding of facts recorded by the District Judge, it is apparent that the election petitioner was present on 12.07.2021 and there is

sufficient compliance of Sub-rule (3) of Rule 4 of the Rules,1994 specially considering the circumstance that Covid pandemic was there in full swing in the year 2021 and certain restrictions were imposed by this Court regarding the presence of litigant and counsel in the court proceedings.

32. In my view, no illegality has been committed by the court below in rejecting the application filed by the petitioner under Order 7 Rule 11 C.P.C. for rejection of the election petition.

33. The writ petition fails and is accordingly, **dismissed**.

(2025) 9 ILRA 658
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.09.2025

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 1219 of 1987

Prakash ...Petitioner
Versus
State ...Respondent

Counsel for the Petitioner:
V.K. Sharma, Siddarth Jaiswal

Counsel for the Respondent:
A.G.A.

Issue for Consideration

Matter pertains to whether the conviction of the appellant under S. 7 r.w. S. 3 of the Essential Commodities Act, 1955, for alleged violation of Clause 3 of the U.P. Foodgrains Dealers' (Licensing and Restriction on Hoarding) Order, 1976, could be sustained when the search and seizure was conducted without complying with S. 100 Cr.P.C. and when the defence evidence created doubt regarding possession of wheat bags.

Headnotes

Essential Commodities Act, 1955 – S. 7 read with S. 3 - Violation of Clause 3 of U.P. Foodgrains Dealers' Order, 1976 - Search and seizure must comply with S. 100 Cr.P.C. - Prosecution must establish proper search, seizure, place of recovery, and compliance with statutory requirements - Failure to call independent witnesses and absence of place-specific details in recovery memo - Creates doubt and causes prejudice to accused - Benefit of doubt warranted.

Criminal Procedure Code, 1973 – S. 100 - Mandatory procedural safeguards in search and seizure – S. 294 - Admission of documents - it cannot fill the gap left by the search party.

Evidence - Defence witnesses - Failure of Trial Court to appreciate defence evidence - Defence witnesses supported appellant's case that wheat bags were kept outside the shop by farmers; Trial Court rejected defence only on ground that witnesses did not know accused - Held incorrect as per material on record.

Held: This non-compliance of S. 100 Cr.P.C. creates doubt on the prosecution story and prejudice the right of accused-appellant - The Trial Court has failed to appreciate that the prosecution has failed to establish the place from where the bags were recovered, as it is not mentioned in the memo of search and seizure, which is necessary under S. 100 of Cr.P.C. - If the documents prepared by the investigating officer is considered to be admitted in evidence, it cannot fill the gap left by the search party - This Court is of the view that prosecution has failed to prove its case. The accused-appellant is entitled to the benefit of doubt - The criminal appeal succeeds and is allowed. (Paras 22,22,24,27,28,29) (E-7)

Case Law Cited

Ranjan Kumar Chadha v. State of Himachal Pradesh, **2023 SCC OnLine SC 1262;** *Saddiq v. State of U.P.,* **1981 Cr.L.J. 379 (Allahabad)**

List of Acts

Essential Commodities Act, 1955; U.P. Foodgrains Dealers' (Licensing and Restriction on Hoarding) Order, 1976; Code of Criminal Procedure, 1973.

List of Keywords

Search And Seizure; Deeming Provision; Reverse Burden; Independent and Respectable Inhabitants; Memo of Recovery; Supurdagigar; Non-Compliance; Benefit of Doubt; Planted Witnesses.

Case Arising From

CRIMINAL APPELLATE JURIDICTION:
Criminal Appeal arising out of judgment and sentence dated 10.04.1987 passed by Special Judge (Economic Offences), Agra in Criminal Case No. 3 of 1985 (State v. Prakash) under Sections 7/3 of the Essential Commodities Act.

Appearances for Parties

Advs. for the Appellant:
V.K. Sharma
Siddarth Jaiswal
Advs. for the Respondent:
A.G.A. (for the State)

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

1. This case is listed under heading, **"Supreme Court in Model Action Plan Cases-more than 30 years' old, not be adjourned."**

2. Heard Sri Siddharth Jaiswal, learned counsel for the appellant and Sri Chandrabadan, learned A.G.A. for the State.

3. Present criminal appeal is preferred against judgment and sentence dated 10.04.1987 passed by Special Judge (Economic Offences), Agra (the Sessions Court) in Criminal Case No.3 of 1985 (State Versus Prakash) for offence under Sections 7 read with Section 3 of Essential Commodities Act, 1955, Police Station Hari Parvat, Agra, whereby the Trial Court has punished the accused-appellant for rigorous imprisonment of six months for violating Clause 3 of U.P. Foodgrains Dealers' (Licensing and Restriction on Hoarding) Order, 1976, along with fine of Rs.1000/-and in default whereof directed rigorous imprisonment of one month.

4. The prosecution case as disclosed from F.I.R. dated 20.10.1983 lodged at 17:35 hours by Sri Asha Ram Prabal, ARO, Lohamandi, Agra, registered as Case Crime No.630 of 1983 reveals that on 20.10.1983 at 10 a.m., the informant along with Inspectors and Secretary,Krishi Utpadan Mandi Samiti, Agra, inspected the Galla Mandi, Ghatia Azam Khan Agra, where he had inspected the shop of the accused-appellant and found therein 100 bags of wheat weighing 100 quintals. On asking for license and the documents, he failed to show the same. The wheat was seized and gave in possession of M/s Ramesh Chand Naresh Chand.

5. Charge-sheet was submitted after investigation. The prosecution has produced PW-1 Asha Ram Prabal, ARO. The counsel for the appellant-accused, who was defending the trial has not disputed the genuineness of the prosecution documents, Exhibits Ka-3 to 8, which led to dispensation of formal proof of those documents. The prosecution, thus concluded.

6. The appellant-accused has produced two witnesses, DW-1 Suresh Chand and DW-2 Uda Ram.

7. The Trial Court has found that the prosecution has proved its case. The defence witnesses are not reliable, as they did not know the appellant-accused, but despite that they have allegedly kept their bags of wheat in his shop. The Trial Court further considered that if the bags of wheat is kept outside the shop, the same cannot be believed. Further held that the appellant was a retailer who could keep only 25 bags

of wheat. He has no document to show 100 bags in his shop and therefore, held that presumption under Section 10-C of Essential Commodities Act got attracted. Hence, convicted and sentenced the appellant-accused as above.

8. Sri Siddharth Jaiswal, learned counsel for the appellant has submitted that 100 bags of wheat was recovered in front of the shop of the accused-appellant and not inside the shop. There is no independent witness of seizure. The prosecution failed to prove the case and incorrect presumption is drawn against the accused-appellant. It is lastly submitted that appellant is more than 80 years of age. Therefore, he prayed that appeal be allowed and judgment of conviction and sentence be set aside.

9. **Per contra**, Sri Chandrabhan, learned A.G.A. submits that the conviction has rightly been recorded by the Trial Judge. The prosecution has proved its case beyond the shadow of doubt. The documents have been admitted by the counsel for the accused-appellant, which attracts Section 294 Cr.P.C., as the genuineness of document is not disputed. The Trial Judge has considered the deposition of defence witness and found them as planted witnesses. The bags of wheat had been recovered from the shop of the appellant, which has been ascertained in evidence. The appellant has flouted the condition of his license and found hoarded the wheat in his shop in contravention to the license. Hence, the appellant stood rightly convicted and sentenced. The appeal does not have any ground, which is liable to be dismissed.

10. I have perused entire record, evidence and considered rival submissions made by the parties.

11. The Trial Court has recorded conviction under Section 7 of Essential Commodities Act, as the accused-appellant has violated clause 3 of U.P. Foodgrains Dealers′ (Licensing and Restriction on Hoarding) Order, 1976 issued in exercise of powers under Section 3 of the Essential Commodities Act, 1955. The provision is reproduced hereinbelow.

"3. Licensing of Dealers and commission agents.-- *(1) No person shall carry on business as a dealer or commission agent except under and in accordance with the terms and conditions of a license issued in this behalf by the licensing authority.*

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of five quintals or more of any one of the foodgrains or twenty-five quintals of all foodgrains taken together at any one time shall, ***unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.***

12. Sub-clause (2) provides for keeping of foodgrain, more than the required quantity. The proviso attracted to the sub-clause is the deeming provision that the foodgrain stored is for the purpose of sale. There is a reverse burden on the part of the licensee to be discharged, if the prosecution proves that search and seizure has been made in accordance with Clause 14 of the Order, 1976. The provision is reproduced underneath:

14. ***Power of entry, search, seizure, etc.***

(1) Any Enforcement Officer or the Licensing Authority or any other officer authorised by the State Government in this behalf may, with such assistance, if any, as he thinks fit

(a) enter, inspect or break open and search any place or premises, vehicle or vessel used or believed to be used for the purchase, sale or storage for sale of any of the Scheduled Commodities or in which he has reason to believe that any contravention of the provisions of this Order or the conditions of any licence issued thereunder, has been or is being or is about to be committed;

(b) require the owner, occupier or any other person incharge of any place, premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this Order, or of the conditions of any licence issued thereunder has been or is being, or is about to be committed, to produce any book, accounts or other documents showing transactions relating to such contraventions;

(c) take or cause to be taken, extract from, or copies of any documents showing transactions relating to such contraventions which are produced before him;

(d) search, seize and remove stocks of Scheduled Commodities and the animals, vehicles, vessels or other conveyances used in the said Scheduled Commodities in contravention of the provisions of this Order, or of the conditions of the licence issued thereunder and thereafter take or authorise the taking of of all measures necessary for securing the production of stocks of Scheduled Commodities and the animals, vehicles, vessels or other conveyance so seized in a court and for their safe custody pending such production.

(2) The provisions of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) relating to search and seizure shall, so far as may be, apply to the searches and seizures made under this clause."

13. Sub-clause (2) provides that the provision of Section 100 Cr.P.C. relating to search and seizure shall be made applicable under this clause.

14. Therefore, the Trial Court has to look into the prosecution evidence that search and seizure of seized 100 bags of wheat has been carried out within the provisions of law.

15. The prosecution has produced only one prosecution witness, the Officer who has seized the bags, as PW-1 Asha Ram Prabhal, ARO, Lohamandi, Agra. He has given statement on oath that on 20.10.1983, he along with Secretary, Krishi Utpadan Mandi Samiti, Agra and Food Inspector has inspected the shop of appellant and found 100 bags of wheat weighed 100 quintals. The appellant on demand failed to produce license to keep the bags of wheat. He has further stated that he has handed over the bags of wheat to M/S Ramesh Chand Naresh Kumar Firm. The memo of recovery of wheat and handing over certificate proved by him is Ext. Ka-1 and Ka-2, respectively.

16. Ext.Ka-1 merely shows the number of bag and its weight. It does not disclose the details of search conducted and the place from where the bags have been recovered, whereas Ext. Ka-2 is the memo of handing over the bags to M/s Ramesh Chand Naresh Kumar (Supurdagigar).

17. According to the prosecution, the search and seizure has been made from inside the shop. Though the appellant has defence that the bags of wheat were kept by DW-1 Suresh Chand and DW-2 Udaram in front of his shop, which belongs to them and the appellant has no concern with the bags.

18. This Court will look into the defence of the appellant after considering

prosecution evidence. Presently, it is to be seen whether the prosecution has rightly carried out the search and seizure as per Section 100 of Cr.P.C.

19. Section 100 Cr.P.C. provides, 'Person Incharge of closed places to allow search'. The relevant provisions are reiterated underneath:

"....

(4) ***Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate*** *or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.*

(5) ***The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses****; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.*

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and ***a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.***

....."

20. Sub-section (4) provides a duty on the Officer for calling upon two or more independent and respectable inhabitants of the locality, where the place to be searched is situated. It is not the prosecution case that the independent witnesses were being called. Sub-section (5) and (6) further provide for a list of items seized and the place from where they are found and the copy of it shall be provided to the person and signed by the officers and other persons including the witnesses. The Trial Court has not recorded any finding on the point of compliance of Section 100 Cr.PC.

21. In the case of **Ranjan Kumar Chadha v. State of Himachal Pradesh reported in [2023 SCC OnLine SC 1262]** the Supreme Court held that if there is non-compliance of Section 100 or 165 that itself cannot be a ground for rejecting the prosecution case outright. The effect of such non-compliance will have a bearing on appreciation of evidence of official witnesses and other material depending upon the facts and circumstances of each case.

22. This non-compliance of Section 100 Cr.P.C. creates doubt on the prosecution story and prejudice the right of accused-appellant. There is nothing on record to show that the prosecution has proved the contravention of Clause 3 of Order, 1976, to carry out the search by the raiding party, as the terms of license, provided under Clause 5 of the Order, 1976 has not been discussed. The restrictions on possession of foodgrains is provided under Clause 11 of Order.

23. The appellant to absolve himself from the liability of deeming provision of Clause 3 has produced two defence witnesses before the Court. It is also the case of the appellant that the bags of wheat were not stored inside the shop, but were stored outside the shop and he has no concern with the alleged bags. Two

witnesses DW-1 Suresh Chand and DW-2 Uda Ram have deposed before the Trial Court that they are the farmers having agricultural field and the bags of wheat have been kept by them in front of the shop. After keeping the bags for some time they merely went in the market to know the price that could be fetched. Both the witnesses have provided their revenue record to show that they were farmers. DW-2 Udaram has also given Nagar Mahapalika Chungi receipt of taking the foodgrain to the Mandi. They have also deposed before the Trial Court that for the release of their seized bags of wheat they have moved application before the District Magistrate.

24. The Trial Court has not considered the statement of these two defence witnesses, as trustworthy, because they did not know the appellant. Therefore, the Trial Court was of the opinion that keeping the bags inside the shop of the appellant without knowing him is hard to be believed. To my opinion is not a correct analysis of statement of defence witnesses, who have stated that they have kept the bags outside the shop and went to know the price of wheat in the market, in such circumstances, their knowing the appellant-accused is of no importance. Moreover, the prosecution has not disclosed in the search and seizure memo about the place where the bags were kept.

25. The Trial Court has failed to appreciate that the prosecution has failed to establish the place from where the bags were recovered, as it is not mentioned in the memo of search and seizure, which is necessary under Section 100 of Cr.P.C.

26 Learned counsel for the accused has admitted the documents invoking Section 294(3) Cr.P.C. The documents which have been admitted to be genuine by the counsel for the accused-appellant are the documents pertaining to police investigation. On this point, a Division Bench of this Court in **Saddiq Versus State of U.P., reported in 1981 Cr.L.J. 379, Alld.** has held:

"If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under sub-section (1) of Section 294 Cr. P.C. it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implies the admission of the correctness of its contents. Such a document may be read in evidence under sub-section (3) of Section 294 Cr. P.C. Neither the signature nor the correctness of the contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct."

27. If the documents prepared by the investigating officer is considered to be admitted in evidence, it cannot fill the gap left by the search party.

28. Therefore, considering the entire gamut of the facts, this Court is of the view that prosecution has failed to prove its case. The Trial Court has not considered evidence produced by the prosecution and defence in right perspective, but merely considered the statement of prosecution witness and presumed the guilt of the accused-appellant, which has been duly discharged by the appellant by producing

the defence witnesses. In the facts and circumstances of the present case, this Court, therefore, is of the opinion that the accused-appellant is entitled to the benefit of doubt.

29. The criminal appeal succeeds and is **allowed**.

30. Accused-appellant Prakash son of Achal Bahadur, is on bail, therefore, his bail bonds are discharged. He need not surrender. He shall file personal bond and surety bonds in compliance of Section 437A Cr.P.C. to the satisfaction of Trial Court within a period of four weeks.

31. The office is directed to transmit the lower court record along with a copy of the judgment to the Trial Court for ensuring compliance.

(2025) 9 ILRA 664
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 1876 of 1983

Laxman **...Appellant**

Versus

State of U.P. **...Respondent**

Counsel for the Appellants:
G.P. Dixit, Prakash Chandra Srivastava, Vishnu Prakash

Counsel for the Respondents:
A.G.A.

Issue for Consideration

Whether the High Court can recall its earlier judgment dated *17.03.2025* confirming the conviction of the appellant, on the ground that the judgment was passed *"in the absence of the appellant, treating him as an absconder"* and whether such recall is maintainable under S. 528 BNSS (corresponding S. 482 Cr.P.C.), in view of the bar under S. 362 Cr.P.C. (S. 403 of BNSS).

Headnotes

Code of Criminal Procedure, 1973 - Recall of Judgment - Scope of S. 528 BNSS / S. 482 Cr.P.C. - Bar under S. 362 Cr.P.C. / S. 403 BNSS -Absconding Accused - Appeal Heard on Merits in Absence - Consistent with law in Surya Baksh Singh and Bani Singh - Court may decide appeal on merits when appellant deliberately avoids appearance - Case Distinguished – Dhananjay Rai inapplicable since appeal there was dismissed without going into merits; here the appeal was decided on merits - High Court cannot entertain a recall or review application under Section 482 of Cr.P.C. to re-examine or modify its own judgment on merits after it has been signed - Inherent power can be used only to prevent an abuse of the process of the Court or to secure the ends of justice, but it does not extend to reviewing a final judgment except for rectifying minor errors.

Held: The appeal had already been decided on merits, after full "re-appreciating and re-evaluating the evidence on record" - ratio of Dhananjay Rai is inapplicable - The appellant had absconded for 30 years, failed to appear despite several opportunities were given to the applicant/appellant, and therefore the Court rightly proceeded to decide the appeal on merits - Recall under S. 528 BNSS / S. 482 Cr.P.C. is not maintainable, as S. 362 Cr.P.C. (S. 403 BNSS) "explicitly prohibits" review/alteration of a signed judgment, except to correct a clerical or arithmetical error - Supreme Court precedents affirm that criminal courts become functus officio after signing the judgment, and inherent powers cannot circumvent S. 362 Cr.P.C. - Consequently, "this recall application along with delay condonation application is dismissed. (Paras 10,11,12,13,14,15) (E-7)

Case Law Cited

Dhananjay Rai @ Guddu Rai vs. State of Bihar, ***2022 LiveLaw (SC) 597;*** *Surya Baksh Singh*

vs. State of Uttar Pradesh, **(2014) 14 SCC 222;** *K.S. Panduranga v. State of Karnataka,* **(2013) 3 SCC 721;** *Mohd. Sukur Ali v. State of Assam,* **(1996) 4 SCC 729;** *Bani Singh vs. State of U.P.,* **(1996) 4 SCC 720;** *Vikram Bakshi and Others vs. R.P. Khosla and Another,* **2025 SCC Online SC 1783**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973

List of Keywords

Absconding; recall; delay condonation; re-appreciating; re-evaluating; non prosecution; procedural review; substantive review; substantive review; functus officio; clerical or arithmetical error; opportunity of being heard.

Case Arising From

CRIMINAL APPELLATE JURIDICTION:
Criminal Appeal No. 1876 of 1983, arising from confirmation of conviction and sentence upheld by judgment dated 17.03.2025.

Appearances for Parties

Advs. for the Appellant:
G.P. Dixit
Prakash Chandra Srivastava
Vishnu Prakash
Advs. for the Respondent-State:
A.G.A.

(Delivered by Hon'ble Vivek Kumar Birla, J.
&
Hon'ble Praveen Kumar Giri, J.)

Order on Criminal Misc. Recall Application along with Delay Condonation Application

1. Heard Mr. Prakash Chandra Srivastava, learned counsel for the applicant/appellant and Mr. Jai Narain, learned A.G.A. for the respondent State. 2. The present application along with delay condonation application has been filed by the applicant/appellant under Section Section 528 of BNSS (corresponding Section 482 of Cr.P.C.) seeking recall of the judgment and order dated 17.3.2025, passed by this Court in Criminal Appeal No.1876 of 1983 whereby this Court has confirmed the conviction and sentence of the appellant.

3. The learned counsel for the appellant submits that the impugned judgment was passed in the absence of the appellant, treating him as an absconder despite the appeal being admitted and the applicant having been granted bail by this court.

4. Learned counsel for the appellant further submits that the appellant's counsel, Mr. G.P. Dixit, passed away a long time ago. Consequently, the appellant could not be informed about the hearing of the appeal and therefore was not properly represented. Although this court issued coercive measures against the appellant, he could not be informed because he was no longer living in his village of Beerpur Salempur. It is submitted that the appellant was residing at House No. 636, Har Gobind Nagar Muktasar Sahib, in Punjab with his brother/deponent, who was taking care of him. As a result, the appellant could not respond to the notice issued by this court.

5. It is further submitted that appellant came to know about the impugned judgment on 30.05.2025. Thereafter, he appeared before the learned Chief Judicial Magistrate, Etahwah, on 02.06.2025, and has been in jail since that date.

6. Learned counsel for the appellant further submits that the impugned order has been passed ex parte without affording an opportunity of hearing to the appellant and, therefore, the same may be recalled. He has relied upon the decision in the case of **Dhanajay Rai @ Guddu rai vs. State of**

Bihar (2022 LiveLaw (SC) 597) to submit that an admitted appeal against conviction cannot be dismissed on the ground that the accused in absconding. Learned counsel for the appellant has relied upon paragraph No.8 of this judgment which is quoted below :

"8. The anguish expressed by the division bench about the brazen action of the appellant of absconding and defeating the administration of justice can be well understood. However, that is no good ground to dismiss the appeal against the conviction, which was already admitted for final hearing, for non prosecution without adverting to merits. Therefore the impugned judgment will have to be set aside and the appeal will have to be remanded to the High Court for consideration of the merit".

7. As against this, learned A.G.A for the respondent State has submitted that the impugned order has been passed on merits, after re-appreciation of the evidence rather than due to non prosecution. Therefore, the recall application is not maintainable in view of Section 362 of Cr.P.C.

8. Learned A.G.A. has further submitted that the applicant was absconding for a long time; therefore, this Court issued a notice for his appearance either personally or through an advocate. Learned A.G.A. has relied upon paragraphs 1 to 6 of the judgment dated 17.3.2025, which confirmed the trial Court's judgment. Paragraphs 1 to 6 of the said judgment are being reproduced:

"1. List revised. No one appears on behalf of the appellant to press the present appeal.

2. Learned counsel for the appellant died long back and as such, appellant was issued notice to engage another counsel vide order dated 24.10.2018. As per the report submitted by Chief Judicial Magistrate, Etawah dated 11.01.2022, the appellant Luxman is missing since last 30 years. Noticing the aforesaid fact on 27.04.2024, following order was passed:

"The Chief Judicial Magistrate, Etawah, by a letter dated 11.1.2022, has informed that the appellant Luxman is missing/absconding for the last 30 years.

The Chief Judicial Magistrate, Etawah, with the help of administration may adopt all possible measures to search out the appellant. The measures which he would take would include the measure of tapping the sureties.

List this case on 27.5.2024."

3. According to the office report dated 24.05.2024, based on the report of Chief Judicial Magistrate, Etawah dated 23.05.2024, whereabouts of the appellant and his family members are not known. Names and addresses of sureties could not be ascertained as the bail bonds furnished by appellant-accused were not found in the trial court?s record. The Chief Judicial Magistrate, Etawah vide letter dated 25.07.2024 has again reported that the appellant and the sureties could not be located.

4. In ***Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222****, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court*

can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to an appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

"24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25....

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.?

(Emphasis supplied)

5. The aforesaid view has been followed by the Hon'ble Full Bench in ***Criminal Reference No.1 of 2024, In Re-Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.****, decided on 22.01.2025, paragraph Nos. 151 and 152 whereof are quoted as under:*

"151. The crux of the aforesaid observations of the three celebrated judgments rendered by the Hon?ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13, thus, covers the entire length and breadth of Question No. 5 formulated by the Division Bench at Lucknow for consideration by this Bench and no fresh exercise, in our considered opinion, is required to be undertaken by this Bench, including on one point which has been highlighted by the Division Bench at Lucknow i.e. whether the amicus curiae may be appointed even when the presence of the convict, appellant or accused-respondent may be secured and without his consent.

152. The aforesaid legal precedents would evidently canvass that the emphasis of the Apex Court has been on providing opportunity of being heard to the appellant who is willing to cooperate with the appellate court or his counsel and in this regard a process to cause his presence for the purpose of giving opportunity of being heard is required to be issued to him and when the court is satisfied that such appellant is deliberately avoiding his presence before the court, in such a situation, the court may dispose of the appeal in the manner approved by the Hon?ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13 (i.e. after perusing the record/evidence vis-a-vis judgment of the trial court with the assistance of prosecutor and Amicus, if appointed) and we do not have any reason to deviate from the settled proposition laid down by the Apex Court in the above mentioned cases, moreover, the appointment of amicus is only for the purpose to provide fair trail to the appellant and also for rendering the assistance to the Court."

6. Under such circumstances, we proceed to consider the present appeal on merits with the help of Shri Rahul Asthana, learned AGA for the State."

9. This Court has gone through the entire record and after perusal of the entire record and other documents, it is observed that that the appellant was given ample opportunity to appear before this court, but he failed to do so. It is undisputed that despite being released on bail, the appellant chose to abscond and did not appear to represent himself. Therefore, this court proceeded to consider and adjudicate the appeal on merits.

10. The appeal preferred by the applicant/appellant was considered and decided on its merits, after re-appreciating and re-evaluating the evidence on record following the decisions in **Surya Baksh Singh (Supra)** and in **Criminal Reference No.1 of 2024, In Re- Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.**. The judgment confirming the conviction appellant, which spans in 19 pages, details the facts and evidence on record, discusses the depositions of prosecution witnesses, and applies the facts to relevant case laws. Therefore, it cannot be said that the impugned judgment is passed without adverting to the merits of the case.

11. The judgment relied by the appellant in **Dhananjay Rai (Supra)** cannot aid the appellant, as the facts in the said matter is different from the present one. In that case, the appeal was dismissed for non prosecution without adverting to

merits. However, in the present case, the appeal has been decided on merits after re-appreciating and re-evaluating of evidence on record.

12. Moreover, Hon'ble the Supreme Court has time and again held that held that a High Court cannot entertain a recall or review application under Section 482 of Cr.P.C. (Section 528 of BNSS) to re-examine or modify its own judgment on merits after it has been signed. The inherent power under Section 482 of Cr.P.C. (Section 528 of BNSS) can be used only to prevent an abuse of the process of the Court or to secure the ends of justice, but it does not extend to reviewing a final judgment except for rectifying minor errors.

13. In a recent decision in **Vikram Bakshi and Others vs. R.P. Khosla and Another, 2025 SCC Online SC 1783** the Hon'ble Supreme Court has held as under :

27. The law relating to power of a criminal court to review or alter its own judgment or order is governed by the provisions of Section 362 of CrPC (equivalent to Section 403 of Bhartiya Nagrik Suraksha Sanhita, 2023). The Provision explicitly provides that except for clerical and arithmetical error, no court shall alter or review its judgment. It is appropriate to refer to the bare provision of Section 362 of CrPC which reads as follows:

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or fin Criminal Appeal @ SLP (Crl.) No.3425/2022 Page 16 of 27 order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

27A. The comparison of the power of review of a civil court vis-a-vis power of criminal court to review or recall its own judgment or order arising out of criminal proceedings has been put to rest by numerous decisions of this Court. It would be appropriate at this juncture to discuss the relevant decisions of this court pertaining to review or recall power of criminal courts to ascertain the correct position of law before proceeding to refer and deal with the factual matrix of the present case.

28. The scope of Section 362 of CrPC has been discussed and elaborated by a three-judge bench decision of this Court in State of Kerala vs. M.M. Manikantan Nair,4 wherein it held that CrPC does not authorize High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 explicitly prohibits the court after it has signed its judgment or final order disposing of case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed.

29. Similarly, in Hari Singh Mann vs. Harbhajan Singh Bajwa and Others5, this Court observed that section 362 of CrPC is based on the acknowledged principle of law that once a matter is finally disposed of by a court, the said court, in absence of specific statutory provisions, becomes functus officio and is disentitled to entertain fresh prayer for same relief.

30. In Sanjeev Kapoor (supra) it has been reiterated that Section 362 of CrPC imposes an embargo on a criminal

court to alter and review its own judgment. Elaborating on the two relaxations envisioned by the legislature, this Court explained that an alteration or review is only feasible if it is so provided by the said legislation itself or by any other law in force. It was also clarified that such an attempt to alter or review is also not feasible or permissible through a reference to Section 482 of CrPC for being expressly barred under Section 362 of CrPC.

34. Criminal Appeal @ SLP (Crl.) No.3425/2022 Page 19 of 27 34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section "362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu."

14. The appellant has not annexed any document which shows that he was residing outside of his residence and he never approached to his residence. No information was given to him by his family members and he was evading the Court proceedings for last thirty years. The order sheet of Criminal Appeal No. 1876 of 1983 reveals that several opportunities were given to the applicant/appellant. Even non-bailable warrant was issued against him but he did not come before the Court and gave wrong impression that whereabouts were not known to anybody. Thus in the present facts and circumstances of the case, this recall application filed under Section 528 of BNSS along with delay condonation application is not maintainable as it is barred by Section 362 of Cr.P.C. (Section 403 of BNSS).

15. In view of the above, this recall application along with delay condonation application is dismissed.

(2025) 9 ILRA 670
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 2136 of 1985

Pargan Singh & Ors. ...Appellant
Versus
State ...Respondent

Counsel for the Appellants:
Anil Raghav, Brijesh Sahai, S.P.S. Raghav, Shanshak Shekhar

Counsel for the Respondents:
A.G.A. , V. Singh

Issue for Consideration

Whether the conviction of the appellants for the offences under SS. 307/149, 147, 148 I.P.C. and SS. 30 of the Arms Act was justified in view of the defence arguments regarding: (i) credibility of fact-witnesses, (ii) delay in recording statement of injured PW2, (iii) alleged non-explanation of injuries on deceased Lallan Singh, (iv) plea of self-defence, and (v) whether the ingredients of S. 307 I.P.C. stood proved.

Headnotes

Indian Penal Code, 1860 – S. 307 - Attempt to Murder - Intention, not nature of injury, is determinative - Injury need not be on vital part; hurt sufficient - Intention for S. 307 inferred from surrounding circumstances - Right of Private Defence - Court may consider even if plea not specifically taken - Explanation of Injuries - Prosecution must explain injuries on accused when material; but explanation adequate here - Delay in recording statements - Not fatal if witness is injured and evidence is corroborated - Eyewitness need not specify which accused inflicted which blow in group assault – Sentencing – object - to impose a sentence that reflects the conscience of society and acts as a deterrence.

Code of Criminal Procedure, 1973 – SS. 313, 394, 161 - Arms Act, 1959 – S. 30 -

Held: Conviction upheld - Self-defence plea rejected - Section 307 IPC attracted - Delay in recording statement of PW2 not fatal - Sentence affirmed - Appeal "accordingly dismissed" - Directions for Custody. (Paras 31 to 53) (E-7)

Case Law Cited

Shahid Khan v. State of Rajasthan, **(2016) 4 SCC 96;** *Nandan v. State of U.P.,* **2010 SCC OnLine All 5221;** *Maheshwar Tigga v. State of Jharkhand,* **(2020) 10 SCC 108;** *Gottipulla Venkatasiva Subbrayanam v. State of A.P.,* **(1970) 1 SCC 235;** *Mohar Rai v. State of Bihar,* **(1968) 3 SCR 525;** *State of Gujarat v. Bai Fatima,* **(1975) 2 SCC 7;** *Lakshmi Singh v. State of Bihar,* **(1976) 4 SCC 394;** *Nand Lal v. State of Chhattisgarh,* **(2023) 10 SCC 470;** *Karu Marik v. State of Bihar,* **(2001) 5 SCC 284;** *State of M.P. v. Imrat,* **(2008) 11 SCC 523;** *State of Maharashtra v. Balram Bama Patil,* **(1983) 2 SCC 28;** *Girija Shankar v. State of U.P.,* **(2004) 3 SCC 793;** *R. Prakash v. State of Karnataka,* **(2004) 9 SCC 27;** *State of M.P. v. Saleem,* **(2005) 5 SCC 554;** *Shoyeb Raja v. State of M.P.,* **2024 SCC OnLine SC 2624;** *State of M.P. v. Mohan,* **(2013) 14 SCC 116.**

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; **Code of Criminal Procedure, 1973.**

List of Keywords

Common Object **-** Self-Defence - Injured Witness - Broken Gun - Incised Wounds - Firearm Injury **-** Vital Parts **-** Aggressors - Snatched the Weapons **-** Bloodstained Soil - Intention -Overt Act **-** Attempt to Murder - Enmicable Relations -Categorical Explanation.

Case Arising From

CRIMINAL APPELLATE JURIDICTION:
Criminal Appeal No. 2136 OF 1985, against judgment dated 16.08.1985, Sessions Court, arising from FIR regarding incident dated 28.02.1982 at Village Barhan, P.S. Dhina, Varanasi.

Appearances for Parties

Advs. for the Appellants:
Sri Kamal Krishna, Senior Advocate
Sri Prakhar Saran Srivastava
Sri K.P.S. Yadav
Sri Vijay Shantam, Amicus Curiae
Advs. for the Respondent–State:
Sri Satendra Nath Tiwari, A.G.A.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Prakhar Saran Srivastava, learned counsel appearing on behalf of appellant nos. 1 & 4, Sri K.P.S. Yadav, learned counsel appearing on behalf of appellant nos. 5, 6 & 9, Sri Vijay Shantam, Amicus Curiae and Sri Satendra Nath Tiwari, learned A.G.A. for the State-Respondent.

2. The instant criminal appeal has been filed by the appellants being aggrieved by

the judgement and order dated 16.08.1985 whereby the Appellant No.1, Pargan Singh, Appellant no.2, Ram Murat Singh @ Sheo Murat Singh, Appellant No.3, Doctor Singh, Appellant No.4, Mangala Singh, Appellant No.5, Raj Nath Yadava, Appellant No.6, Sheshnath, Appellant No.7, Naresh, Appellant No.8, Ram Briksh, Appellant No.9, Param Hans, Appellant No.10, Amar Deo, Appellant No.11, Sobran, Appellant No.12, Bhorick and Appellant No.13, Bhukhal were convicted for the offences under Section 307 read with Section 149 I.P.C. and sentenced to undergo ten years' rigorous imprisonment. The Appellant No. 13, Bhukal was also convicted for the offence under Section 147 I.P.C. and sentenced to undergo one year rigorous imprisonment. The Appellant No.1, Pargan Singh, Appellant No.2, Ram Murat Singh alias Shio Murat Singh, Appellant No.3, Doctor Singh, Appellant No.4, Mangala Singh, Appellant No.5, Raj Nath Yadava, Appellant No. 6, Shesh Nath, Appellant No. 7, Naresh, Appellant No.8, Ram Briksh, Appellant No.9, Param Hans, Appellant No.10, Amar Deo, Appellant No.11, Sobran and Appellant No.12, Bhorick were also convicted for the offences under Section 148 I.P.C. and sentenced to undergo two years' rigorous imprisonment. The Appellant No.14, Bhadra Narain Singh, who was found guilty for the offence under Section 30 of the Arms Act, was sentenced to undergo two months' imprisonment.

3. During the pendency of the appeal, Appellants No. 3, 7, 8, 10, 11, 12, 13 and 14 had died and the appeal on their behalf was **abated**. The Appellant No. 2, Ram Murat alias Shio Murat Singh has also died. An application on behalf of the legal representatives (LRs) of the Appellant No.2 was moved under Section 394 Cr.P.C., which was allowed by this Court vide order dated 19.08.2025 and his LRs were permitted to contest the conviction of the Appellant No.2 and the said LRs were represented by the Amicus Curiae appointed by this Court.

4. Briefly stated prosecution story is that the informant as well as the appellants herein were residents of Village- Barhan, Police Station- Dhina, District Varanasi. The informant, Ram Saneshi Yadav was the owner in possession of a chak in the North of the village. Adjoining the chak of Ram Saneshi there was an Abadi land. As per the allegations made by the prosecution on 28.02.1982, at about 3:00 P.M, the Appellant No.12, Bhukhal and Appellant No.13, Bhorick respectively, were digging the foundation for raising construction of their house. The informant and others stopped Bhukhal and his son Bhorick from raising the construction and asked them to let there be a proper measurement before the construction of the house. Upon this, said Bhukhal and Bhorick stopped their work and went to the village, and thereafter, Lallan Singh, Pargan Singh, Ram Murat Singh armed with guns, Doctor Singh, Mangala Singh, Rajnath, Sheshnath, Naresh Yadava and Ram Briksh, armed with Ballams (spears), and Param Hans, Amar Deo, Sobran and Bhorick armed Gandasaas and Bhukhal with lathi, having formed a common object, reached there and abused them and told that the construction of the house would be raised. Upon which, Chandrama, Bandhan Yadava, Ram Sakal, Ram Awadh, Banwari, Ram Lacchan and Ram Saneshi Yadava prohibited them from abusing as well as from raising the construction of the house. At this obstruction, the accused persons started firing and assaulting them.

5. Then, first of all, Lallan Singh fired from his gun, causing a firearm injury to Ram Lachhan and Ram Awadh. Bandhan, Chandrama, Banwari and Ram Sakal were attacked by ballam and gandasas by the accused persons and they sustained the injuries by ballam and gandasas. After sustaining the injuries, the persons on the complainant's side rushed towards Lallan Singh and the gun of Lallan was broken and in the process, Lallan Singh also sustained injuries. This incident was seen by Rama Awadh and Chhangur, etc.

6. After the incident, the informant, Ram Saneshi Yadav along with injured persons, Chandrama, Banwari, Ram Awadh, Ram Sakal, Ram Lacchan and Bandhan, reached the police station and lodged a report at 05:10 P.M., on the same date. Thereupon, the F.I.R. was registered for the offences under Sections 307/149, 147, and 148 of the I.P.C.

7. All the six injured persons were referred to the S.S.P.G. Hospital, Varanasi, for their medical examination. Dr. M.S. Sharma examined Banwari at 9:15 P.M. and observed the following injuries on his body:

"1. Lacerated wound 2 cm. x 1/2 cm. x scalp deep mid of forahead 5 cm. from root of nose.

2. Abraded contusion 2 cm. x 2 cm. on left side fore-head 2 cm. above left eye brow.

3. abraded contusion 2 cm. x 2 cm., 1 cm. above injury no. 1.

4. Lacerated wound 2 cm. x 1 cm. x scalp deep 10 cm, above right ear.

5. Contusion 14 cm. x 2 cm on the right side chest 2 cm. away from right nipple.

6. Contused swelling 4 cm. x 3 cm. on pack of right wrist, x-ray was advised.

7. Contusion 10 cm. x 2cm, on right scapular region.

8. Abrasion 2 cm. x 4 cm. on front and upper part of left lag.

All the injuries were reported to be caused by blunt object and friction except injury no.6 which was kept under observation."

8. On the same day at about 09.55 P.M. Dr. M.S. Sharma examined Ram Sakal and noted the following injuries on this person:-

"1. Incised wound 1/2 cm. x 4 cm muscle deep on back of right elbow joint with swelling around it in an area of 1 cm. x 3 cm. on back of albow joint.

The injury was reported to be caused by sharp edged object. It was kept under observation."

9. On the same day Dr. M.S. Sharma, examined Ram Awadh, son of Ram Vriksh and noted the following injuries on this person:-

"1. Gun-shot wound 1/4 cm. 2 of 1/4 cm. x depth not protted on right side chest 5 cm. , medialright nipple.

This injury was reported to be caused by firearm and kept under observation."

10. On the same day at about 8.10 P.M. Dr. T.B.Rai examined Bandhan and noted the following injuries on his person:-

"1. Incised wound 8 cm. x 5 cm. x bone deep on right side face 7 cm. below right eye.

2. Incised wound 10 cm. x 3 cm. x depth not probed on front of right neck.

3. Incised wound 5 cm. x 1 cm. x muscle deep on the right forearm 12 cm. below right elbow.

4. Abrasion 2 ??. x 1 cm., on the outer aspect of right thigh in upper portion.

5. Abrasion 2 cm. x 1 cm, on the right side of the head 9 cm, above right ear.

Injuries nos. 1, 2 and 3 were reported to be edged by sharp-edged weapon and rest by friction."

11. On the same day Dr. T.B.Rai examined Chandrama at 08.55 P.M. and noted the following injuries:-

"1. Incised wound 2 cm. x 5cm. x depth not probed on the left side of chest.

2. Incised panetrating wound .5 cm. x .5 cm. x depth not prbed on the set sim of the chest 6 cm. below injury no, 1.

3. Abrasion 1 cm. x 1 cm, on the inner side of the right fore- arm upper part.

4. Abrasion 1/4 cm. x 1/ cm. on top of the head.

Injuries nos. 1 and 2 were reported to be caused by sharp edged weapon and the rest by friction.

On the same day at about 08:42 P.M. Dr. T. B. Rai examined Ram Lachchan and would not note the injuries of Ram Lachhan because of his serious condition. He referred injured Ram Lachchan because of his serious condition. He referred injured Ram Lachchan to surgeon. Dr. T.B Rai had informed the police station that the injury of Ram Lachhan could not be noted due to very low general condition. "

12. Thereafter, the investigation was conducted by Ram Prasad Arya, the then S.O. of P.S.- Dhina and the Investigation Officer recorded the statement of the informant. On 01.03.1982, he reached at the spot and thereafter, the statements of witness Chhangur Yadava (PW3), Ram Saneshi (PW1) were recorded and a site-plan was prepared and also bloodstains and plain soil from the spot. Memos were prepared. He also found a broken gun at some distance, which was allegedly used by Lallan Singh, the deceased. The gun was seized. He also found the used cartridge in the right barrel of the said gun. On investigation, he found that this gun belonged to Bhadra Narain Singh, the accused. He seized the cartridge and broken gun. Therefore, he interrogated other witnesses, namely Shyamlal and Munnu Yadava and arrested the Appellant No14, namely Bhadra Narain Singh under Section 30 of the Arms Act. He also recorded the statements of various other witnesses and the accused persons were arrested. Some of the accused persons have surrendered before the court. Thereafter, the charge-sheet was filed by the IO against the accused persons for the offences under Sections 307/149, 147 and 148 I.P.C. However, against Appellant No. 14, Bhadra Narain Singh, the charge-sheet was filed for the offence under Section 30 of the Arms Act as well as under Sections 307/149, 147 and 148 I.P.C. A cross-case was also lodged by accused Bhadra Narain Singh at 5:45 P.M. on the same day i.e., 28.02.1982, stating therein that there was a long-standing feud between the Bhadhan Yadava and the family of Bhadra Narain Singh and on 28.02.1982, at 3:00 P.M., Bhadra Narain Singh and his nephew, deceased Lallan Singh, were going to see on their field on their chak. Lallan Singh had a licensed double barrel gun and at the same time, Ram Sakal, Bandhan armed with ballam, Banwari, Ram Awadh s/o Bhrigu, Ram Awadh s/o Ram Krit, Chandrama and Ram Lacchan armed with

lathis reached there. Chandrika and Ramadhar also reached and exhorted to kill Lallan Singh. On their exhortation, the aforesaid persons attacked on Lallan Singh and started beating him by ballam and lathis. Lallan Singh also made a fire by which the accused persons also sustained firearm injuries. Lallan Singh fell down after sustaining injuries of ballam and lathis and his gun was also broken and Lallan Singh succumbed to his injuries on the spot.

13. The post-mortem of the dead body of Lallan Singh was conducted by Dr. Sidh Gopal, who noted the following ante-mortem injuries on the body of Lallan Singh, the deceased:

"1. Lacerated wound 5 cm. x 1 cm. x scalp deep middle of head 7 cm, above nosal bone.

2. Lacerated wound 5 cm. x 1 cm. x scalp deep left side head 6 cm, above left ear.

5. Lacerated wound 8 cm. x 1 cm x bone deep middle of fore-head.

4. Stab wound with sharp margins 5 cm. x 2 cm. x chest cavity on the left side front of chest 3 cm, below clevicle. Direction backward, middle and downward.

5. Multiple contusion on the left arm outer side.

6. Incised wound 1 cm. x 1 cm. x muscle deep on the left elbow back.

7. Incised wound 1 cm x .5 cm. x skin deep 1 cm above injury no. 6.

In the opinion of the doctor injuries nos. 4, 6 and 7 were possibly caused by ballam and injuries no 1,2,3 and 5 were caused by lathi."

14. After submission of the charge-sheet in the instant case the case was committed to the Sessions Court for trial. The Sessions Court framed the charges as aforesaid against the appellants herein, who denied the charges and claimed trial.

15. In support of its case, the prosecution has examined the PW1 (Ram Saneshi), PW2 (Ram Sakal) and PW3 (Chhangur) as the witnesses of fact, PW4 (Head Moharrir Rangila) as the formal witness of registration of the F.I.R. and PW6 (Ram Prasad Arya) as Investigation Officer of the case. Dr. M.S. Sharma was examined as PW5 and Dr. T.B. Rai was examined as PW7, who supported the medical examination report of the injured persons.

16. In defence, the accused persons have examined Ram Murat alias Janardan as DW1 and Dr. Siddh Gopal as DW2, who conducted the post-mortem of Lallan Singh, the deceased. After completion of the trial, the trial court has convicted and sentenced all the appellants herein as aforesaid.

17. Learned Senior Counsel appearing for the appellants submits that out of the three facts witnesses, PW1, the informant, did not appear to be an eye-witness after close scrutiny of his deposition as he has failed to depose which accused person has assaulted which injured person with which weapon. Learned Senior Counsel further submits that PW3, Chhangur is an interested and partial witness as he was having the enmical relations with the accused persons. Learned Senior Counsel further submits that the PW2, Ram Saneshi, is an injured witness, however, his statement was recorded by the Investigation Officer after 18 days of the registration of the F.I.R. However, no explanation for the same has been provided by the IO for such

a delayed examination of PW2. Thus, relying upon the judgement of the Apex Court in **Shahid Khan v. State of Rajasthan, (2016) 4 SCC 96**, learned Senior Counsel submits that since there is no explanation with regard non examining the PW2 by the Investigation Officer for 18 days, his testimony cannot be relied upon for the prosecution and conviction of the appellants herein, cannot be sustained.

18. Relevant observations of the Apex Court in the aforesaid judgement are as under:

"20. ***The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence.*** *No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir,* ***in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants.*** *The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."*

19. It is further submitted that by learned Senior Counsel for the appellants that there are serious contradictions between the depositions of PW1 and PW2 regarding assault on Lallan Singh, the deceased, who were actively in self-defence while causing the injuries to the injured persons. PW6, Chhangur, had previous longstanding enmity as the civil disputes between the accused persons and this witness Chhangur is pending since, 1960.

20. Learned Senior Counsel further submits that if the injuries were not dangerous to life, the offence under Section 307 I.P.C. is not made out. As per the medical opinion none of the injuries of the injured persons were found dangerous to life, therefore, the offence under Section 307 I.P.C. is not made out against the appellants herein. In support of his case, learned Senior Counsel has relied upon the judgement of the Coordinate Bench of this Court in **Nandan v. State of U.P., 2010 SCC OnLine All 5221**, which reads as under:

"19. The contention of the learned counsel for the appellants that no offence under section 307 IPC is made out seems to have some substance. In the case of Rekha Mandal and others v. State of Bihar (1967 CAR 108), ***the Apex Court has held that section 307 IPC requires that the act must be done with such intention or knowledge or under such circumstances that if death be caused by that act, the offence of murder will emerge. In that case the fact that the injuries were not dangerous to life was also taken into***

consideration for holding that no offence under section 307 IPC was made out."

21. It is further submitted by learned Senior Counsel that the prosecution has failed to put the specific question with regard to the injured persons acted in self-defence. Therefore, the said story of injured persons acted in self-defence cannot be relied upon in support of his submission. Learned Senior Counsel has further relied upon the judgement of the Apex Court in **Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108.** Learned Senior Counsel for the appellants has further submitted that the accused persons have acted in self defence, as the deceased Lallan Singh was killed by the injured persons. The spot of incident with regard to self-defence by the accused persons has not been considered by the trial court.

22. In support of his submission, learned Senior Counsel has relied upon para '19' of the judgement of the Apex Court in **Gottipulla Venkatasiva Subbrayanam v. State of A.P., (1970) 1 SCC 235** which reads as under:

"19. The fact that the ***plea of self-defence was not raised by Accused 10 and that he had on the contrary pleaded alibi does not, in our view, preclude the Court from giving to him the benefit of the right of private defence, if, on proper appraisal of the evidence and other relevant material on the record, the Court concludes that the circumstances in which he found himself at the relevant time gave him the right to use his gun in exercise of this right. When there is evidence proving that a person accused of killing or injuring another acted in the exercise of the right of private defence the Court would not be justified in ignoring that evidence and convicting the accused merely because the latter has set-up a defence of alibi and set forth a plea different from the right of private defence.*** *The analogy of estoppel or of the technical rules of civil pleadings is, in cases like the present, inappropriate and the* ***Courts are expected to administer the law of private defence in a practical way with reasonable liberality so as to effectuate its underlying object, bearing in mind that the essential basic character of this right is preventive and not retributive.*** *The approach of the High Court in this matter seems to us to be erroneous. We accordingly allow the appeal and acquit the appellants."*

23. It is further submitted by learned Senior Counsel that according to the case of the prosecution the incident took place near the place where the accused persons were raising the construction and, as per the prosecution, seven accused persons received injuries from spear but no bloodstains were found near the place of construction. It is further submitted that six persons on the prosecution side had sustained the incised wounds and they were bleeding and they were chasing Lallan Singh from the point X to C, which is around 150 steps ahead.

24. It is further submitted by learned Senior Counsel that the prosecution has failed to explain the injuries caused to the deceased Lallan Singh. The injuries to said Lallan Singh were duly proved in the instant case by Dr. Sidh Gopal. The F.I.R. is totally silent about the injuries caused to Lallan Singh, by whom or which weapon. Thus, since the prosecution has failed to explain the injuries sustained by the deceased on the side of the accused persons, therefore, it should be presumed that the prosecution is not presenting the

true story of the case and there is some deliberate concealment on the part of the prosecution. Therefore, the conviction of the appellants herein is unsustainable.

25. In support of his submission, learned Senior Counsel has relied upon the judgements of the Apex Court in **Mohar Rai vs. State of Bihar : (1968) 3 SCR 525, State of Gujarat v. Bai Fatima, (1975) 2 SCC 7; Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394** and the recent judgment of the Apex Court in **Nand Lal and Others vs. State of Chhattisgarh : (2023) 10 SCC 470.**

26. Sri K.P.S. Yadav, learned counsel for the Appellant No. 5, 6 & 9, also adopts the arguments advanced by learned Senior Counsel on behalf of Appellant No.1. Sri Vijay Shantam, learned Amicus Curiae, who is appearing on behalf of the LRs of Appellant No.2, who was a government employee, had also supported the arguments advanced by learned Senior Counsel.

27. Per contra, learned A.G.A. submits that in the cross-case lodged by Bhadra Narain Singh, on behalf of the accused persons, the accused persons therein were acquitted and the appeals filed against the acquittal were also dismissed by this Court. Learned A.G.A. further submits that the prosecution has properly explained and narrated the entire story in true sequence. Initially, Bhaukhal and Bhorick were digging the foundation, which was objected by the informant's side. Thereupon, both of them went away and after some time, the accused persons armed with firearms, spears, lathis and gandasas, came on the spot and assaulted the injured persons. First of all, it was the deceased, Lallan Singh, who had fired at Ram Awadh and Ram Lachhan. Ram Awadh sustained the firearm injury on his chest and Ram Lachhan sustained the injury on left side of his face. Thereafter, all the accused persons has assaulted the injured persons and in self-defense, so that the said Lallan, who was armed with firearm, may not kill other persons. The injured persons have acted in self-defense and broken his gun and assaulted him, as has been categorically deposed by all three fact witnesses in the instant case. Thus, there was a clear and categorical explanation with regard to the injuries sustained by the deceased, Lallan Singh, however, it has been further explained by the witnesses that none of the persons from the prosecution side were carrying any weapon. They have snatched the weapons from the accused persons and thereafter assaulted the deceased Lallan.

28. Learned A.G.A. further submits that from the injury report, which are duly approved, the injuries sustained by Banwari are on the vital parts. Ram Awadh has sustained firearm injury on the chest that is also a vital part. Bandhan has sustained incised wounds on right face and front of right neck. Chandrama has also sustained two incised wounds on his chest. Thus, from the nature of injuries sustained, which are as noted hereinabove, are on the vital parts of the body of the injured persons. Therefore, there was clear and categorical intention on the accused persons to kill the injured persons. Therefore, offence under Section 307 I.P.C. is categorically made out. PW1 has categorically stated that Chandrma and Banwari, had assaulted Lallan with a broken sphere.

29. Thus, learned A.G.A. submits that the injury sustained by the deceased Lallan Singh, has been duly explained by the prosecution and the prosecution has acted

in self-defence after assault was made by the deceased Lallan Singh and the other accused persons collectively upon the injured persons. It is the case of the prosecution that the accused persons were trying to raise the construction, which was objected by the prosecution side, upon which the assault was made by the accused persons along with deceased Lallan. Thus, the appellants herein were the aggressors of the incident.

30. PW2 in the instant case is an injured witness and he is a most reliable witness in the instant case who has categorically supported the prosecution case in detail and nothing has come forward in his deposition to disbelieve his testimony. His deposition is also corroborated by PW1 and PW3. PW1 himself has stated that he has also assaulted the deceased Lallan along with Chandrama and Banwari. Thus, his presence cannot be doubted. So far as the injuries sustained by the injured persons from the prosecution side are duly proved, there is a sufficient explanation with regard to the injuries sustained by the deceased Lallan. Therefore, the trial court has rightly convicted the accused person, therefore, there is no ground for this Court to interfere with the conviction and sentence awarded to the accused appellants herein. Accordingly, the learned A.G.A. prays for dismissal of the instant criminal appeal filed by the appellants.

31. Having heard the rival submissions so made by learned counsels for the parties, this Court has carefully gone through the record of the case. It is undisputed and sufficiently proved in the instant case that six persons from the prosecution side, namely Banwari, Ram Sakal, Ram Vriksh Ram Awadh, Bandhan and Chandrama had sustained the injuries and most of the injuries sustained by the injured persons were incise wounds and firearm injuries that too on the vital parts of the injured persons.

32. In **Karu Marik v. State of Bihar, (2001) 5 SCC 284**, the Apex Court has observed as under:

"10. Many a times, ***the nature of the injury inflicted itself presents a most valuable evidence of what the intention was but that is not the only way of gauging intention. Each case must be examined on its merits. Intention being the state of mind of the offender, no direct evidence as a fact can be produced. It has to be gathered from the available evidence and the surrounding circumstances in considering whether the offence is covered by clause I of Section 300 IPC. As far as clause II of Section 300 is concerned, it is enough if the accused had the intention of causing such bodily injury as he knew to be likely to cause the death of the person to whom the harm is caused. Such intention may be inferred not merely from the actual consequences of his act, but from the act itself also."***

33. In **State of M.P. v. Imrat, (2008) 11 SCC 523**, the Apex Court has observed as under:

11. It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

'307. Attempt to murder.?Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.'

12. To justify a conviction under this section, ***it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.***

13. It is sufficient ***to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted.*** *The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.* ***Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."***

This position was highlighted in State of Maharashtra v. Balram Bama Patil [(1983) 2 SCC 28 : 1983 SCC (Cri) 320] , Girija Shankar v. State of U.P. [(2004) 3 SCC 793 : 2004 SCC (Cri) 863] , R. Prakash v. State of Karnataka [(2004) 9 SCC 27 : 2004 SCC (Cri) 1408 : JT (2004) 2 SC 348] and State of M.P. v. Saleem [(2005) 5 SCC 554 : 2005 SCC (Cri) 1329] (SCC pp. 559-60, paras 11-13).

12. "15. In Sarju Prasad v. State of Bihar [AIR 1965 SC 843] it was observed in para 6 that ***mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.***

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. ***The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.*** *The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.*

17. Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that

act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for in Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine." [Ed. : Quoting from State of M.P. v. Saleem, (2005) 5 SCC 554, p. 560, paras 15-17.] "

13. It is seen that the High Court had arrived at erroneous hypothetical conclusions ignoring the fact that the nature of injuries were grievous and were caused by use of sufficient force by sharp-edged weapons. The injuries were so serious that both the investigating agency and the doctor felt that dying declaration was to be recorded. That being so, the High Court's conclusion that the offence under Section 307 was not made out is clearly indefensible. The order of the High Court is set aside and that of the trial court is restored."

34. In **Shoyeb Raja v. State of M.P., 2024 SCC OnLine SC 2624**, the Apex Court has observed that minor nature of injuries is not sufficient to not to attract Section 307 I.P.C., which is observed as under:

"10. Section 307 IPC is the charge that the Courts below have concurrently, refused to frame. It reads as under:"

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

11. Let us at this stage, consider the law as laid down by this Court in respect of this section, as also that of Section 34 IPC, given that there are a total of eight respondents (accused) before the court.

11.1 In State of Maharashtra v. Kashirao : (2003) 10 SCC 434, the Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:

"The essential ingredients required to be proved in the case of an offence under Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused

having no excuse for incurring the risk of causing such death or injury."

11.2 This Court in Om Prakash v. State of Punjab : 1961 SCC OnLine SC 72, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

"a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. *It is to be clearly understood, however, that the* ***intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300.*** *The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in Section 511, can only mean "whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time."*

(Emphasis supplied)

11.3 Hari Mohan Mandal v. State of Jharkhand : (2004) 12 SCC 220 holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

*"10….**To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. …What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.***

*11. It is sufficient to **justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.** Therefore, it is not correct to acquit an accused of the charge under Section 307*

IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

(Emphasis supplied)

16. In view of the above discussion, given that the minor nature of injuries is not sufficient reason to not frame a charge under Section 307 IPC, as per the law laid down by this Court, the judgment impugned, passed in Criminal Revision No. 3125 of 2021 dated 23rd November, 2023, is set aside. Accordingly, the appeal is allowed. The concerned Trial Court is directed to have the Respondents stand trial for all the offences for which charges have been framed, as also Section 307. The trial shall proceed on its own merits, as per law, uninfluenced by the observations hereinabove which were for the limited purpose of testing the propriety of the impugned order. The same shall be expedited."

35. In **State of M.P. v. Mohan, (2013) 14 SCC 116**, the Apex Court has observed as under:

"13. The High Court, in our view, while reducing the sentence, has not properly appreciated the scope of Section 307 IPC under which the respondents were found guilty. The relevant portion of Section 307 reads as follows:

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

14. The High Court was of the opinion that the injuries have not been caused on the vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word "hurt" which has been explained in Section 319 IPC and not "grievous hurt" within the meaning of Section 320 IPC. ***Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gunshot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307.*** *The High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established."*

36. Thus, from their aforesaid judgments, it is categorically settled law that, for making out offences under Section 307 I.P.C., it is not necessary that the injuries caused to the injured person were sufficient to cause death. Rather, the intention of the person causing the injuries must be considered for the purpose of offences under Section 307 I.P.C. However, the nature of the injuries, the manner in which they were caused, the parts of the body where they were inflicted and the weapons used for the assault are circumstances which would indicate the intention of the assailants.Thus, looking at the nature of injuries and the weapons used, it can be safely concluded that there was

clear and categorical intent on the part of the accused persons to kill the injured persons. In view thereof, the offence under Section 307 I.P.C. is apparently made out against the accused persons.

37. So far as the submission of learned Senior Counsel for the appellants that the injuries sustained by the deceased persons have not been explained by the prosecution is concerned, it is relevant to note the deposition of PW1, first of all, Lallan Singh had fired at Ram Awadh and Ram Lacchan. Ram Awadh had sustained the injury on his chest, and thereafter, Lallan Singh had again tried to insert the cartridge into his gun. Thereafter, the persons from the prosecution side ran towards Lallan Singh and assaulted him so that he may not kill persons from the prosecution side. In cross-examination, it has also been categorically stated by PW2 that PW1, Ram Saneshi and Chandrama had assaulted Lallan with lathi and Banwari had assaulted Lallan with a broken spear.

38. Similarly, PW2 has also stated that the accused persons turned towards them and Lallan Singh fired and due to the said fire, Ram Lachhan and Ram Awadh had sustained injuries. Ram Awadh had sustained the injuries on his chest. Ram Lacchan had also sustained injuries and the other accused persons also began to assault them. At the same time, Lallan Singh moved aside and tried again to insert cartridges on his gun, and in the meantime, the spear of one of the accused persons was also broken and in self-defence, from their side also, the assault was made by some persons upon Lallan Singh.

39. PW3, Chhangur has also stated that, first of all, Lallan Singh had fired at Ram Awadh, Ram Lacchan and Banwari, Chandrama and Ram Saneshi, had assaulted deceased Lallan in self-defence. If they they had not killed Lallan, then he could have again fired at them.

40. In view of the aforesaid categorical explanations given by the prosecution side, it can be safely concluded that there is sufficient explanation with regard to the injuries sustained by deceased Lallan during the incident. The manner of injuries caused and the person who caused the injuries to Lallan Singh has also been categorically stated by all the fact witnesses. The submission of learned Senior Counsel that the injury sustained by deceased Lallan Singh is not explained by the prosecution, in the considered opinion of this Court, is unfounded. Therefore, the judgments relied upon by learned Senior Counsel are of no avail to the appellants.

41. Another submission of learned Senior Counsel is that, with regard to the material available on record, regarding the injured persons of the prosecution side have assaulted the deceased Lallan in their self-defence. the same was not put to the accused persons while recording their statements under Section 313 Cr.P.C. From the perusal of 313 Cr.P.C. statements of the accused persons, specifically Question No. 11, of the statement is categorically with regard to the prosecution side acted in self-defence by assaulting Lallan Singh. The said question was specifically put to the accused persons. In view thereof, the said submission of learned Senior Counsel is also unfounded.

42. Another submission made by learned Senior Counsel is that the bloodstains were not found at the place where the foundation was being dug by the accused persons and no bloodstains were

recovered from that place rather, the bloodstains were recovered around 150 feet away from the said spot. As per the prosecution case, on the second round, when the accused persons came on the spot and started construction at the place, the same was resisted by the prosecution's side and the injured person.

43. Thereupon, it is the case of the prosecution that the accused persons and the said Lallan Singh started chasing the injured persons, and therefore, first of all, Lallan Singh fired at Ram Awadh and Ram Lacchan Singh. Thereupon, the other accused persons also assaulted them, and in the meantime, when Lallan Singh was trying to insert another cartridge into the gun, some of the injured persons approached Lallan Singh, broke his gun, and then, from a broken spear, Banwari had assaulted Lallan Singh and the informant Ram Saneshi and Chandrama assaulted Lallan Singh with Lathi, due to which he died. Therefore, from the narration of the prosecution's story, it is categorically clear that the incident was not at an static place but the accused were chasing the accused persons, and thereafter, after some distance, they have been assaulted, wherefrom, the Investigation Officer recovered bloodstained soil and clean soil. Therefore, it is not the case of the prosecution at all that the assault was made by the accused persons at the side of digging, but at some distance after chasing the injured persons. The appellants had assaulted them, wherefrom the bloodstained soil was recovered by the IO. Thus, the said submission is also, in the considered opinion of this Court is unfounded.

44. So far as the deposition of PW1 is concerned, it has been argued by the learned Senior Counsel appearing for the appellants that PW1 was not a reliable witness, as he was not present on the spot. The said submission is made on the basis of the fact that this witness has failed to explain, which accused had assaulted which injured person and with which weapon. In the instant case, there are 14 accused persons who have been alleged to have assaulted the injured persons. Therefore, it is very difficult for any of the injured persons, when both sides are assaulting in full swing, armed with different weapons, to explain which accused had assaulted which injured person with which weapon. At the initial stage of the assault, it had been categorically stated that it was Lallan who had fired at Ram Awadh and Ram Lacchan. Thereupon, other accused persons collectively started assaulting the injured persons, out of which three of the persons assaulted Lallan Singh, and in the process, he died on the spot. Therefore, merely because this witness is not in a position to explain who were the accused person assaulted which of the injured persons, his testimony cannot be disbelieved. All the three fact witnesses have stood firm on their depositions. Thus, in the considered opinion of this Court, the prosecution has succeeded in proving its case beyond doubt against the appellants herein and from the narration of the prosecution, it has been categorically proven that it were the appellants herein who were the aggressors of the incident, who came on the spot armed with lethal weapons and assaulted the injured persons. In the process, the injured persons, while acting in self-defence also assaulted deceased Lallan, who succumbed to the injuries in the process of assault by both sides.

45. So far as the reliance placed by learned Senior Counsel on the judgment of

Shahid Khan (supra) is concerned, with due deference, it is observed that the same is not applicable to the facts of the instant case, because in that case, there was a delay in recording the statements under Section 161 Cr.P.C. of the persons, and there was no corroboration of their evidence from any independent source. In those circumstances, the Apex Court held that the prosecution had failed to prove the case against the accused persons beyond a reasonable doubt. However, in the instant case, PW2 Ram Saneshi, whose statement was allegedly recorded 18 days after the registration of the F.I.R, is an injured witness. Immediately after the incident, he was brought to the police station and thereafter he was referred for medical examination on the date of the incident itself. Thus, merely because the Investigation Officer recorded the statements after 18 days is not sufficient to discard his evidence, as his deposition is totally corroborated by the medical examination report, which was sufficiently proved by the doctors who conducted the medical examination of the said witness. Therefore, the observation made by this court in **Shahid Khan (supra)**, in the considered opinion of this court, would not be applicable in this case.

46. In view thereof, this Court does not find any illegality in the conviction of the accused persons. Therefore, the conviction of the appellant, namely Appellant No.1, Pargan Singh, Appellant No.2, Ram Murat @ Sheo Murat, Appellant No.4, Mangala Singh, Appellant No.5, Raj Nath Yadava, Appellant No.6, Shesh Nath, Appellant No.9, Param Hans, are recorded by the trial court is hereby **upheld**.

47. So far as the sentence of the accused persons are concerned, in the assault made by the persons herein, wherein six persons have sustained injuries, therefore, as per Section 307 of the I.P.C., the sentence upto imprisonment of life can be awarded. However, the trial court has taken very lenient view in awarding the sentence to the appellants only upto ten years' rigorous imprisonment.

48. Since, the appellant no.2 has already died, in view thereof, there is no requirement to pass any order with regard to sentence of appellant no.2.

49. With regard to the remaining appellants, it is noteworthy that the instant criminal appeal is pending since 1985 and since then, more than 40 years have passed, the Appellant No.1, Pargan Singh, was aged about 24 years at the time of recording his statement under Section 313 Cr.P.C. The Appellant No.9, Param Hans was aged about 35 years at the time of recording his statement under Section 313 Cr.P.C. The Appellant No.6, Shesh Nath, was aged about 36 years at the time of recording his statement under Section 313 Cr.P.C. Appellant No. 5, Raj Nath was aged about 40 years. The Applicant No.4, Mangala Singh, was aged about 32 years at the time of recording his statement under Section 313 Cr.P.C.

50. Thus, all the aforesaid appellants, namely Appellant No.1, Pargan Singh would be aged about 64 years, Appellant No.4, Mangala Singh, would be aged about 72 years, Appellant No.5, Raj Nath Yadava would be aged about 80 years, Appellant No.6, Shesh Nath would be aged about 76, Appellant No.9, Param Hans would be aged about 75 years at present.

50. In **State of M.P. v. Saleem, (2005) 5 SCC 554**, the Apex Court has clarified

the object of sentencing in the criminal matter as under:-

"8. ***The object should be to protect society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence.*** *It is expected that the courts would operate the sentencing system so as to impose* ***such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.***

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. ***Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.***

10. ***The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong.*** *The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should ?respond to the society's cry for justice against the criminal".*

51. In view of the aforesaid categorical observation of the Apex Court and looking at the nature of the instant case and sentence awarded by the trial court which appears to be reasonable, this Court do not find any good reason to interfere with the sentence awarded to the surviving appellants no. 1, 4, 5, 6 and 9 herein. Therefore, the conviction as well as the sentence of the appellants herein is **upheld**.

52. The instant criminal appeal is accordingly **dismissed**. The trial court record be sent back to the trial court. The Appellants No. 1, 4, 5, 6 and 9, are on bail.

53. The concerned trial court is directed to take them into custody to serve out the sentence awarded by the trial court and affirmed by this Court and send a report to this Court within one month.

54. Registrar (Compliance) is directed to send a copy of this order to the trial court concerned forthwith for compliance.

55. This court appreciates the assistance provided by Sri Vijay Shantam, learned Amicus Curiae, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

(2025) 9 ILRA 687
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.09.2025

BEFORE

THE HON'BLE SANJAY KUMAR PACHORI, J.

Criminal Appeal No. 2388 of 1982

Saind Pal Singh & Anr. ...Appellants
Versus
State ...Respondent

Counsel for the Appellants:

Counsel for the Respondent:

Issue for Consideration

Matter pertains to whether the conviction of the appellants under S. 393 IPC read with S. 12 of the U.P. Dacoity Affected Area Ordinance, 1982 can be sustained, in view of (i) *delay in lodging FIR*, (ii) *absence of independent witnesses*, (iii) *non-compliance with S. 100(4) CrPC*, and (iv) *failure to prove recovery and use of knives*

Headnotes

Criminal Procedure Code, 1973 - S. 154 - Delay in lodging F.I.R. - Effect of - Indian Penal Code, 1860 - Section 393 - Attempt to commit robbery - Proof of – S. 393 IPC r.w. S. 12 of U.P. Dacoity Affected Area Ordinance, 1982 - Recovery and arrest memo prepared prior to lodging FIR - No independent/public witness – Mandatory provision of Section 100(4), CrPC not complied with – Delay of about 1½ hours in lodging FIR though police had already arrested accused – Prosecution failed to prove material genesis of case – Trial court's acquittal under Section 25(b)(4) of Arms Act showing failure to establish use of knives.

Criminal Jurisprudence – Standard of proof – "Guilt must be proved beyond all reasonable doubt" – Reasonable doubt must arise from evidence or lack of it – Court to adopt view favourable to accused where two views possible – Delay in FIR must be satisfactorily explained – Deliberate unexplained delay fatal.

Criminal Procedure Code, 1973 – S. 100(4) - Search and Seizure - Independent Witnesses - Admissibility and Weight.

Evidence – Police officer witness – Absence of independent witness not fatal if efforts shown – But such absence casts duty of careful scrutiny – Police evidence not to be discarded solely due to absence of public witness.

Held: The manner in which, according to the prosecution, the incident unfolded, does not inspire confidence in as much as theory of attempting robbery by knives is not proved - All this shrouds the prosecution in suspicion - Prosecution has not proved its case beyond reasonable doubt - contrary view taken by the trial court is against the weight of evidence - Prosecution has failed to prove the charges for the offence punishable under S. 393 I.P.C. - evidence on record does not bring home the guilt - appellants are entitled to the benefit of doubt - entitled to be acquitted - Present criminal appeal is allowed - conviction and sentence set aside - appellants acquitted - personal bonds and sureties discharged. (Paras 16,17,18, 19,20,21,22,23,24) (E-7)

Case Law Cited

Thulia Kali v. State of Tamil Nadu, **(1972) 3 SCC 393;** *Meharaj Singh & Ors. v. State of U.P. & Ors,* **(1994) 5 SCC 188;** *Satpal Singh v. State of Haryana,* **(2010) 8 SCC 714;** *Ajmer Singh v. State of Haryana,* **(2010) 3 SCC 746;** *Kalpnath Rai v. State (through CBI),* **(1997) 8 SCC 732;** *Sahib Singh v. State of Punjab,* **(1996) 11 SCC 685;** *Yogesh Singh v. Mahabeer Singh & Ors.,* **(2017) 11 SCC 195;** *State of U.P. v. Krishna Gopal,* **(1988) 4 SCC 302;** *Krishnan v. State,* **(2003) 7 SCC 56;** *Valson v. State of Kerala,* **(2008) 12 SCC 24;** *Bhaskar Ramappa Madar v. State of Karnataka,* **(2009) 11 SCC 690;** *Kali Ram v. State of H.P.,* **(1973) 2 SCC 808;** *State of Rajasthan v. Raja Ram,* **(2003) 8 SCC 180;** *Chandrappa v. State of Karnataka,* **(2007) 4 SCC 415;** *Upendra Pradhan v. State of Orissa,* **(2015) 11 SCC 124;** *Golbar Hussain v. State of Assam,* **(2015) 11 SCC 242;** *State of Punjab v. Jagir Singh,* **(1974) 3 SCC 277;** *Shivaji Sahabrao Bobade v. State of Maharashtra,* **(1973) 2 SCC 793.**

List of Acts

Indian Penal Code, 1860; U.P. Dacoity Affected Area Ordinance, 198; Code of Criminal Procedure, 1973; Arms Act, 1959.

List of Keywords

Attempt To Robbery; Recovery Memo; Arresting Memo; Independent/Public Witness; Delay in Lodging of the F.I.R.; Mandatory Provision of Section 100(4) Cr.P.C.; Beyond Reasonable Doubt; Benefit of Doubt; Theory of Attempting Robbery by Knives; Does Not Inspire Confidence; Shrouds the Prosecution in Suspicion.

Case Arising From

CRIMINAL APPELLATE JURIDICTION:
Criminal Appeal No. 2388 of 1982, arising from judgment dated 28.08.1982 passed by Special Judge (D.A.A.)/Additional Sessions Judge, Lalitpur in Special Case No. 31 of 1982.

Appearances for Parties
Advs. for the Appellants:
Shri Nanhe Lal Tripathi,
Shri Anshul Tiwari,
Sri Sudhanshu Chaturvedi
Advs. for the Respondent:
Sri Manoj Kumar Singh, A.G.A.

(Delivered by Hon'ble Sanjay Kumar Pachori, J.)

1. Present Criminal Appeal has been preferred under Section 374 of Code of Criminal Procedure (hereinafter referred as "Cr.P.C.) against the judgment and order dated 28.8.1982 passed by Special Judge (D.A.A.)/Additional Sessions Judge, Lalitpur in Special Case No. 31 of 1982, whereby trial court convicted the appellants under Section 393, I.P.C. read with Section 12 of U.P. Dacoity Affected Area Ordinance, 1982 and sentenced them 3 years rigorous imprisonment each, however, trial court acquitted the appellants under Section 25(b)(4) of Arms Act.

2. Brief facts of the case are that the first information report dated 29.12.1981 has been registered against the appellants and unknown persons stating that when the first informant was on the way of village Bairwara at 9.00 p.m. near the Mission hospital, three assailants came and threatened him with dire consequences after showing the knives and attempted to robbery with him. On his crying 4-5 police personnels came and arrested two persons out of three assailants. The appellants have been arrested by the police at the place of incident.

3. The F.I.R. (Ex- Ka-3) was lodged at 22.30 p.m. on 29.12.1981 (which was registered within about 1-1/2 hour of the incident) against the appellants and the police party prior to lodging of F.I.R. prepared two recovery memos as Ex- Ka-1 and Ex- Ka-2 of illegal knives from the possession of appellants. After completing the investigation, charge sheets have been submitted against the appellants under Section 393, I.P.C. and Section 25/4 of Arms Act, separately as Ex- Ka-7, Ex- Ka-8 and Ex- Ka-9.

4. Being the Special Case, which is triable by the Special Judge of D.A.A., charge has been framed on 29.5.1982 under Sections 393, I.P.C. read with Section 12 of D.A.A. and Section 25(b)(4) of Arms Act against the appellants and they denied the charges.

5. The Prosecution has examined as many as four witnesses namely, PW-1, S.I. Surjan Singh, (who prepared recovery memo, Ex- Ka-1 and Ex- Ka-2), PW-2, H.C. 3, Naresh Singh (Scribe, who proved chik F.I.R. and G.D. Rapat as Ex- Ka-3 and Ex- Ka-4) PW-3, S.I. P.N. Tripathi (Investigating Officer) and PW-4 Munna Lal (first informant).

6. After examination of prosecution witnesses, trial court recorded the statements of the present appellants under Section 313, Cr.P.C. wherein they stated that they have been implicated due to enmity with the local police and they stated that they have been taken into custody from Station Lalitpur. However, the appellants have not produced any evidence in defence.

7. Learned counsel for the appellants argued before the trial court that they have been implicated by the local police due to

enmity and the prosecution has totally failed to prove the case beyond reasonable doubt against the appellants.

8. The trial court observed that the first informant has no enmity with the appellant Munna Lal, so as to why he has been implicated in the present case, in this regard no question has been asked in his cross examination. The police reached at the place of incident on crying of the first informant and the police caught the appellants after chasing 40-45 paces. The prosecution successfully proved the case beyond reasonable doubt against the appellants on the basis of evidence of PW-4 Munna Lal and proved the charges under Section 393, I.P.C. read with Section 12 of U.P. Dacoity Affected Area Ordinance, 1982 and convicted and sentenced the appellants under Section 393, I.P.C. read with Section 12 of U.P. Dacoity Affected Area Ordinance, 1982. However, the trial court further observed that the prosecution has failed to prove the charge under Section 25(b)(4) of Arms Act without proving the notification. Hence, the appellants preferred the present appeal.

9. Learned counsel for the appellants submits before this Court that the first information report of the present case was lodged after preparing the recovery and arrest memo on the spot by which the police arrested the appellants. It is further submitted that the prosecution has not proved the recovery and arresting memo, as per law provided under Section 100(4), Cr.P.C. by an independent and respectable inhabitants of the locality. It is further submitted that the prosecution has failed to explain the delay in lodging of the F.I.R. after about 1-1/2 hour of the incident whereas the police party reached immediately. It is further submitted that the prosecution has failed to prove the charge against the appellants under Section 25(b)(4) of the Arms Act, due to this reason there is no evidence to prove the fact that the appellants attempted to robbery with the first informant on the basis of knives after causing hurt. Therefore, the present appeal is liable to be allowed.

10. Learned A.G.A. vehemently refuted the arguments of the appellants and supported the judgment and order passed by the trial court and submits that the prosecution has proved its case beyond reasonable doubt against the appellants. Hence, the criminal appeal deserves no merit and is liable to be dismissed.

11. Heard Shri Nanhe Lal Tripathi, Shri Anshul Tiwari, Sri Sudhanshu Chaturvedi, learned counsels for the appellants and Sri Manoj Kumar Singh, learned A.G.A. for the State.

12. In the present case, recovery and arresting memo have been prepared prior to lodging of F.I.R, which had been proved by PW-1, S.I. Surjan Singh as Ex-Ka-1 and Ex-Ka-2. The prosecution has not examined any independent/public witness of the locality with regard to recovery made as Ex-Ka-1 and Ex-Ka-2.

13. PW-1, S.I. Surjan Singh stated in his cross-examination that on screaming of PW-4 Munna Lal, the police party reached the spot where the appellants committed offence of attempt to robbery. On reaching of police party, they fled away from the spot but the appellants have been arrested at 9.00 p.m. after chasing 40-50 paces.

14. PW-4 Munna Lal stated in his chief examination that at 9.00 p.m., three assailants came and on the basis of showing

knives, they attempted to commit robbery with him and on his crying, police party reached the spot and after chasing two assailants (present appellants) had been caught hold by the police. As per statement of the witness, he also proved the recovery and arresting memo of the appellants.

15. Except the two witnesses, there is no other witness of fact. It is cardinal principle that for administration of criminal justice, the prosecution has to prove the case against the appellants beyond reasonable doubt.

16. After having gone through the entire material on record, except the statements of PW-1, S.I. Surjan Singh and PW-4 Munna Lal, there is no other evidence to prove the prosecution case and following facts clearly emerged thereof:-

(a) PW-4 Munna Lal, first informant lodged the F.I.R. after about 1-1/2 hours of the arresting of the appellants by the police personnel. At 9.00 p.m., PW-1, S.I. Surjan Singh along with police party arrested the appellants after chasing them and arresting and recovery memo have been prepared without following the mandatory provision of Section 100(4) Cr.P.C. and no attempt or effort was made for independent witness.

(b) There is a considerable delay in lodging of the F.I.R. by PW-4 when the appellants were arrested at 9.00 p.m. and police reached the place of incident and arrested them immediately. There is no explanation of causing delay in lodging the F.I.R.

(c) The trial court acquitted the appellants under Section 25(b)(4) of Arms Act and prosecution has also failed to prove material genesis of the prosecution case, as alleged by the prosecution that appellants attempted to commit offence of robbery at the instance of knives.

17. It is well-settled position of law that delay in lodging the FIR does not make prosecution case improbable when such delay is properly explained, but a deliberate delay in lodging the FIR may prove fatal. In cases where there is delay in lodging the FIR, the court has to look for a plausible explanation for such delay. **[Thulia Kali v. The State of Tamil Nadu, (1972) 3 SCC 393 (SCC p. 397, para 12), Meharaj Singh & Ors. v. State of U.P. & Ors, (1994) 5 SCC 188 (SCC p. 195-96, para 12), Satpal Singh v. State of Haryana, (2010) 8 SCC 714 (SCC p. 397, para 12)]**

18. Section 100(4) of CrPC reads as under:-

"100)(4). Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

19. The Supreme Court in **Ajmer Singh v. State of Haryana (2010) 3 SCC 746** observed that one can not forget that it may not be possible to find independent witness at all places at all times. The obligation to take public witness is not an absolute rule, if despite effort public witness could not be associated with the raid or arrest of the culprit, the arrest or the recovery made would not be necessarily vitiated.

20. The Apex Court in the case of **Kalpnath Rai v. State (through CBI)**

(1997) 8 SCC 732, while interpreting Section 100(4) Cr.P.C. observed that there can be no legal proposition that evidence of police officer is unworthy of acceptance in case of absence of a witness during police raid. At the most, It would cast a duty on the court to adopt greater care while scrutinizing the evidence of the police officer. If the evidence of a police officer is found acceptable, then it would be the erroneous proposition that the court must reject the prosecution version, solely on the ground that no witness was present. Paragraph No. 88 of the above judgment is quoted as under:-

*"15. In the case of **Sahib Singh v. State of Punjab (1996) 11 SCC 685**, while interpreting Section 100(4) Cr.P.C., the Supreme Court observed that the absence of independent witness during the search would affect the weight of the evidence of police officer, though not its admissibility."*

21. In **Yogesh Singh Vs. Mahabeer Singh & Ors., (2017) 11 SCC 195**, the Supreme Court observed:-

"15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: (SCC pp. 313-14, paras 25-26)

"25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice."

[See also Krishnan v. State, (2003) 7 SCC 56; Valson v. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar and Ors. v. State of Karnataka, (2009) 11 SCC 690].

16.Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Vide Kali Ram v. State of H.P., (1973) 2 SCC 808; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180; Chandrappa v. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain v. State of Assam and Anr., (2015) 11 SCC 242).

17.However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in the case of State of Punjab v. Jagir Singh, (1974) 3 SCC 277: (SCC pp. 285-86, para 23)

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures."

18. Similarly, in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus: (SCC p. 799, para 6)

"6... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."

22. The appellants have been arrested prior to lodging of the F.I.R. on the basis of recovery and arresting memo and the F.I.R. was lodged after about 1-1/2 hour of arresting of the appellants. The manner in which, according to the prosecution, the incident unfolded, does not inspire confidence inasmuch as theory of attempting robbery by knives is not proved by the prosecution. All this shrouds the prosecution in suspicion.

23. On the basis of the facts and circumstances discussed above, an inference can easily be drawn that the prosecution has not proved its case beyond reasonable doubt. The contrary view taken by the trial court is against the weight of evidence. The substantial portion of the judgment of the trial court depends upon the fact that the first informant had no enmity with the appellants to implicate in the case.

24. For all the reasons recorded and discussed above, I am of the considered view that the prosecution has failed to prove the charges for the offence punishable under Section 393, I.P.C. read with Section 12 of U.P. Dacoity Affected Area Ordinance, 1982 against the appellants beyond reasonable doubt as the evidence on record does not bring home the guilt of the appellants beyond the pale of doubt, the appellants are entitled to the benefit of doubt. Consequently, the appellants are entitled to be acquitted of the charges for which they were tried.

25. As a result, present criminal appeal is allowed. The impugned judgment and order of conviction as well as sentence

recorded by the trial court is set aside. The appellants Saind Pal Singh and Prem Babu are acquitted of the charges for which they have been tried. The appellants Saind Pal Singh and Prem Babu are on bail, therefore, their personal bonds and sureties are, hereby, discharged. The appellants will fulfil the requirement of Section 437-A, Cr.P.C. to the satisfaction of the trial court at the earliest.

26. The trial court record be returned forthwith with a certified copy of this judgment for compliance. The office is further directed to enter the judgment in compliance register maintained for the purpose of the Court.

(2025) 9 ILRA 694
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.09.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 2477 of 1986

Har Swaroop **...Appellant**

Versus

State **...Respondent**

Counsel for the Appellants:
S.P.S. Raghav, Rohit Shukla

Counsel for the Respondents:
A.G.A.

Issue for Consideration

Matter pertains to whether the conviction of the appellant Suresh under Ss. 302/149 IPC and 148 IPC was sustainable in view of the ocular, medical and circumstantial evidence, and whether the prosecution had proved its case beyond reasonable doubt.

Headnotes

Indian Penal Code, 1860 - SS. 147, 148, 149, 302, 307 - Code of Criminal Procedure, 1973 – S. 313 - Criminal Trial - Appreciation of Evidence - Related/Interested Witnesses - Eye Witnesses (P.W. 3, P.W. 4, P.W. 6) - Conduct of Near Relatives of Deceased - Non-touching of Dead Body - Highly Unnatural - Presence at place of occurrence - Doubtful - Medical Evidence - Inconsistency with Ocular Evidence - Direction of Fire Arm Injuries - Motive - Alternate Suspect - Enmity Established - Benefit of Doubt - Failure of Prosecution.

Held: Conduct of the eye witness P.W. 3, P.W. 4 and P.W. 6 is highly unnatural -Presence is highly doubtful - Dimension and size of the injuries does not correspond to the eye witnesses account - Prosecution has failed to prove its case beyond the shadow of reasonable doubt **- Appeal allowed** - Conviction set aside - Appellant **Suresh acquitted** - Bail bonds cancelled. (Paras 33, 34, 35, 44, 45, 46, 47, 48, 49) (E-7)

Case Law Cited

Krishna Mochi v. State of Bihar, **(2002) 6 SCC 81;** *Masalti v. State of U.P.,* **AIR 1965 SC 202;** *Darya Singh v. State of Punjab,* **AIR 1965 SC 328;** *Appabhai v. State of Gujarat,* **AIR 1988 SC 696;** *State of A.P. v. S. Rayappa,* **(2006) 4 SCC 512;** *Pulicherla Nagaraju v. State of A.P.,* **(2006) 11 SCC 444;** *Satbir Singh v. State of U.P.,* **(2009) 13 SCC 790;** *Jayabalan v. U.T. of Pondicherry,* **(2010) 1 SCC 199;** *Dharnidhar v. State of U.P.,* **(2010) 7 SCC 759;** *Ram Bharosey v. State of U.P.,* **AIR 2010 SC 917;** *Baban Shankar Daphal v. State of Maharashtra,* **2025 SCC OnLine SC 137;** *Shahaja @ Shahajan Ismail Mohd. v. State of Maharashtra,* **(2023) 12 SCC 558;** *Pahalwan Singh v. State of U.P.,* **2020 (6) ALJ 166;** *Kaptan Singh v. State of U.P.,* **2020 (1) ADJ 106 (DB);** *Jarnail Singh v. State of Punjab,* **(2009) 9 SCC 719;** *State of Haryana v. Bhagirath,* **(1999) 5 SCC 96;** *Neeraj Sharma v. State of Chhattisgarh,* **(2024) 3 SCC 125;** *Balu Sudam Khalde v. State of Maharashtra,* **2023 SCC OnLine SC 355;** *Amar Singh v. State (NCT of Delhi),* **Criminal Appeal Nos. 335–336 of 2015.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Benefit Of Doubt; Unnatural Conduct; Presence Doubtful; Inconsistent Medical Evidence; Firearm Injuries; Direction of Injuries; Ballam (Spear); Incised Wound; Blood-Stained Soil; Enmity; Related Witnesses; Eye-Witness Credibility; No Recovery; Alternative Hypothesis.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2477 of 1986,
arising out of Sessions Trial No. 15 of 1985, District Mathura.

Appearances for Parties

Advs. for the Appellant:
Sri Akhilesh Ripu Soodan Yadav, S.P.S. Raghav, Rohit Shukla.
Advs. for the Respondents:
Sri Rahul Asthana, A.G.A.

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Akhilesh along with Ripu Soodan Yadav, learned counsel for the appellant no. 2 and Sri Rahul Asthana, learned AGA for the State.

2. The appellants by way of this appeal have challenged their conviction under section 302 r/w 149 IPC and under section 148 IPC and sentence of imprisonment for life under section 302/149 IPC and sentence of two years rigorous imprisonment under section 148 IPC. All the sentences have been ordered to run concurrently.

3. Vide order dated 11.3.2019, the appeal stood abated in respect of appellant no.1-Harswarup, appellant no. 3-Jawahar and appellant no. 4-Tulsi and vide order dated 27.2.2024, the appeal stood abated in respect of appellant no. 5-Bhagat Singh. Now the appeal is surviving only in respect of appellant no. 2-Suresh.

4. The prosecution case in brief is that the informant Kunwar Pal gave a written report to the SHO of police station Kosikala District Mathura stating therein that Harswarup, Charan Singh and Kishan Dutt are real brothers. The informant, Charan Singh and Kishan Dutt used to live together and Harswarup was living separately from them. It is further submitted that a dispute was existing regarding the partition of the dwelling house of the informant side as stated above. On the date of giving written report i.e. on 17.9.1984, the brother of the informant Charan Singh was ploughing the field of Mahendra son of Jagram by Mahindra Eicher Tractor and his elder brother Kishan Dutt and his son Sundar Sher Singh were ploughing their field which was in his common share by the tractor. He and Mahendra Singh had gone to deliver afternoon meal to Charan Singh, Kishan Dutt and his son Sundar Sher Singh and they had taken the meal together. After taking the meal, Charan Singh started ploughing the field and he, Mahendra Singh and his brother Kishan Dutt and his son Sunder sat under the Choker tree and were talking to each other. At about 1:30 P.M. Harswarup, Suresh, Jawahar, Bhagat Singh and Tulsi and one other person whose name he did not know but he could identify by face reached there. Harswarup, Tulsi and Bhagat Singh were armed with country-made pistol whereas Suresh and Jawahar were armed with gun and one person whose name he did not know but he could identify by face reached there, was armed with ballam (spear), stopped Charan Singh and aforesaid persons assaulted them by opening fire with their country-made pistol, gun and by ballam (spear) and his

brother received fire arm injuries and when the informant rushed to save his brother, he was also fired upon by them but he somehow escaped unhurt and they fled towards Nagla Atra. When the assailants left the place, they came there and saw Charan Singh was lying dead on driving seat of the tractor. The informant has further stated that due to fear of the assailants, he reached the police station leaving behind the dead body of Charan Singh and the tractor at the place of occurrence.

5. On the basis of above written report, case Crime No. 157 of 1984 was registered under sections 147, 148, 149, 307 and 302 IPC against Harswarup, Suresh, Jawahar, Bhagat Singh and Tulsi and one person who could be identified by face. The investigating officer conducted the investigation and submitted charge sheet against Harswarup, Suresh, Jawahar, Tulsi and Bhagat Singh under sections 147, 148, 149, 307, 302 IPC

6. Learned Magistrate took cognizance of the offence and committed the case to the court of Session. The learned Sessions Judge Mathura framed charge against the accused Harswarup, Suresh, Jawahar and Tulsi and Bhagat Singh under sections 148, 302 r/w 149 and 307 IPC.

7. The prosecution, in order to bring home the charge, has produced Head Constable Deen Dayal Upadhaya as P.W. 1, Constable Ram Naresh as P.W. 2 , Kunwar pal as P.W. 3, Mahendra as P.W. 4, Dr. P.P. Pathak as P.W. 5, Kishan Dutt as P.W. 6, Rajendra Singh Tomar as P.W. 7

8. The prosecution has also proved documentary evidence, as F.I.R.-Ex.Ka1, Written report-Ex.Ka.4, Recovery memo of blood stained clothes- Ex.Ka13, Recovery memo of blood stained and plain soil-Ex.Ka. 14, Recovery memo of 'tractor' and supurdaginama'-Ex.Ka.15, P.M. Report-Ex.Ka.5, Panchayatnama-Ex.Ka.7, Report of chemical examiner-Ex.Ka.19, Charge Sheet 'mool'- Ex.ka. 17, Site plan with index-Ex.Ka.16.

9. After closure of the prosecution evidence, the statement of the accused were recorded under section 313 Cr.P.C. in which they have denied their involvement in the commission of the offence but they have stated that they have been implicated in this case due to enmity. The surviving appellant Suresh has stated that he is son of Harswarup. Kishan Dutt and Kunwar Pal had borrowed Rs. 30,000/- from Charan Singh and had purchased a tractor and there was a dispute regarding payment of instalments of the said loan.

10. The defence has examined Krishan Chandra as D.W. 1, K.K. Matre as D.W. 2, Hari Singh as D.W. 3 and Jauhari Prasad as D.W. 4.

11. Learned trial court after hearing the argument of the prosecution and the defence passed the judgement of conviction and order of sentence impugned.

12. Learned counsel for the applicant has filed written arguments and has submitted that according to first information report the alleged occurrence has taken place in field of one Mahendra son of Jagram on 17.9.1984 at 1:30 PM and its first information report was lodged on 17.9.1984 at 5:30 PM but according to the testimony of P.W. 5 Dr. PP Pathak who has conducted the post mortem of the deceased person on 18.9.1984 at 5:00 PM has opined that duration of injuries could vary by 6

hours on either side since the time of conducting the post mortem of the deceased and the injuries received by the deceased might have been caused at 5:30 AM to 6:00 AM at 18.9.1984 which shows that the date and time of alleged incident is different and not according to prosecution version as it has been stated. It is further argued that as per prosecution version the deceased had taken the food at 12:00 to 12:15 PM on 17.9.1984 and the alleged incident has taken place at 1:30 PM on 17.9.1984 and the deceased died on spot due to injuries sustained by him but according to post mortem report, the semi digested food was found in the stomach of the deceased but in the opinion of doctor the possibilities that deceased might have taken food 3 or 4 hours prior to his death is not ruled out in the present case. The deceased is said to have died after an hour of taking food. It is further submitted that in view of the above the prosecution story becomes highly doubtful.

13. It is further argued that the prosecution story is inconsistent with the post mortem report of the deceased. He further submitted that as per prosecution version general role of firing has been attributed against all the five appellants and one unknown person who was carrying ballam (spear) and caused the injuries upon the person of the deceased with their respective weapons but the deceased has sustained total nine ante-mortem injuries in which injury nos. 1,2,3,4 are fire arm entry wound and the injury no. 5 is the fire arm wound of exit of corresponding injury no. 2 and injury nos. 6 and 7 are the punctured wound which might have been caused by pointed weapon ballam (spear) and injury nos. 8 and 9 are the incised wound which might have been caused by any sharp edged weapon. Ballam (spear) is the pointed weapon, therefore, injury nos. 8 and 9 cannot be caused by ballam (spear) meaning thereby injury nos. 8 and 9 are unexplained injuries by the prosecution.

14. It is also argued by learned counsel for the appellants that the dimension of the fire arm injuries received by the deceased person are also found to be different. The dimension of injury no. 1 which is fire arm entry wound having dimension of 4cm x 3cm into cavity on right side with multiple fire arm wound injury in area of 10cm x 6cm on the right side of the forehead size bearing 0.2cm x 0.2cm into muscle deep blackening and tattooing present and dimension of injury nos. 2, 3 and 4 are similar 2cm x 2cm into cavity deep on front side of left chest and right chest respectively which shows that the injuries nos. 2, 3 and 4 might have been caused by a single fire arm weapon from front side and nature of weapon may be rifle and 315 bore country-made pistol, which have not been shown in the hands of any accused persons.

15. Learned counsel for the appellant vehemently argued that as the directions of the fire arm injuries received by the deceased is concerned, all the fire arm injuries are straight injuries and so far the injury no. 2 is concerned which is through and through injuries which cannot be caused by the accused person upon the person of the deceased while he was sitting on the driver seat with the height of 6 to 7 foot from the earth. Therefore, if the prosecution version is supposed truthful, in that event, the direction of the fire arm injuries received by the deceased should have been upward.

16. Learned counsel further submitted that in present case not a single injury

sustained by deceased is found to be upward which also creates doubt and suspicion on the part of the prosecution story.

17. Learned counsel also argued that as per prosecution version the deceased was ploughing the field by tractor where he was assaulted by all the accused persons with respective weapons but he received all the injuries from the front side which are on chest and abdomen but these injuries cannot be possible to be sustained by the deceased while he was sitting on the driver seat of the tractor. It also raises doubt on the prosecution version that all the accused persons were armed with fire arm weapon then what was need of another person, whose name is not disclosed, to assault with ballam (spear).

18. It is further argued that injuries caused by ballam (spear), which has been received on the left and right side of the chest of the deceased, cannot be caused if the deceased was sitting on the driving seat. Therefore, these all aspects clearly go to show that the actual story of prosecution is different, which is not as alleged by the prosecution and the alleged eye witnesses P.W. 3, P.W.4 and P.W.6 are not disclosing truthful version of the prosecution story and the presence of the alleged eye witnesses are absolutely doubtful and their testimonies are highly tainted.

19. It is further submitted that according to the testimony of P.W. 7 Rajendra Singh Tomar, investigating officer, who has taken the blood-stained earth from the place of occurrence, the field of Mahendra son of Jagram, on 17.9.1984 at 10:30 PM and site plan was prepared on 18.9.1984 at 7 AM but in the site plan the investigating officer has not shown the blood-stained earth from where it was taken. But in the report of chemical examiner the human blood was found on item nos. 2 to 5 and item no. 1 concerned which was blood-stained earth in which the blood was found disintegrated.

20. Learned counsel further refers to the testimony of P.W. 7 investigating officer wherein he has stated that no trail of blood was found on the dead body of the deceased in the field where incident had taken place, therefore, there is no occasion of presence of blood near the dead body of the deceased which shows that the place of occurrence becomes doubtful.

21. Learned counsel further submitted that conduct of P.W. 3 and P.W. 6 are highly unnatural as they have stated that they did not get down the dead body of the deceased from the tractor, even they did not touch the body of the deceased. Learned counsel further submitted that P.W. 3 and P.W. 6 are real brothers of the deceased and their conduct of not touching the dead body of the deceased is highly unnatural which proves that they were not present at the place of occurrence.

22. It is further submitted that P.W. 4 Mahendra son of Chhida is also claiming to be eye witness and he is also nephew of the P.W. 3 and the deceased and he is also related witness and he is not an independent witness, therefore, the evidence of P.W. 4 cannot be considered as truthful.

23. It is further submitted that presence of P.W. 3, P.W. 4 and P.W. 6 who were said to be eye witnesses, is doubtful as they did not try to save the life of the deceased and they have not received any fire arm injuries in the alleged

indiscriminate firing by the accused persons.

24. Learned counsel also argued that there is no recovery of any incriminating material from the possession of the appellants and there is no motive and intention of the appellants to commit the alleged offence and they have been falsely implicated in the present case. Learned counsel further submitted that as per testimony of P.W. 3 partition between all the brothers had already taken place and accused namely Harswarup had started to reside at Faridabad (Haryana) and after partition in the family and the deceased, namely, Charan Singh, Kunwar Pal and Kishan Dutt were residing in the village and they also purchased the tractor jointly on loan in which the deceased as well as witnesses namely Kunwar Pal, P.W. 3 and Kishan Dutt, P.W. 6 had failed to make the payment of instalments of loan of the tractor and they became defaulter in this regard the evidence of DW-2 namely Sri K.K. Matre who was Agricultural Finance Officer at Central Bank of India, has also proved this fact that last payment of instalment of loan was made on 25.6.1984 thereafter no instalment of loan was being paid by the deceased as well as Kishan Dutt and Kunwar Pal.

25. It is further argued that deceased was having multi corner enmity in the village because of the murder case of his father, the deceased, namely, Charan Singh was the witness and Harswarup who is the real brother of the deceased had lodged the first information report regarding the murder case of his father in which one Mohan Lal was found guilty in that case and he was awarded sentence of life imprisonment, who was released after serving out the sentence. Therefore, the needle of suspicion to commit the murder of deceased goes to Mohan Lal or his family members who was having enmity with respect to the murder case of the father of the deceased.

26. Learned counsel further submitted that surviving appellant Suresh has specifically stated in his statement recorded under section 313 Cr.P.C. that the deceased was having enmity in the murder case of his father in which one Mohan Lal was found guilty and he was also awarded life sentence in the murder case of his father and the appellant, namely, Suresh has been falsely implicated in the present case.

27. Learned counsel lastly submitted that prosecution has not established its case beyond reasonable doubt and surviving appellant Suresh is entitled to be acquitted of the charges framed against him. In support of his argument, learned counsel for the appellant has placed reliance on the judgement of Hon'ble Supreme Court passed in **Criminal Appeal Nos. 335 and 336 of 2015, Amar Singh and others vs. The State (NCT of Delhi).**

28. On the other hand, learned AGA for the State argued that the testimonies of P.W. 3, P.W. 4 and P.W. 6 who are the eye witnesses of the occurrence are reliable. He further submitted that there might be some minor contradictions but they are not of material nature and they cannot impact on the reliability of their testimonies.

29. Learned AGA further submitted that the testimony of witness P.W.3, P.W.4 and P.W.6 is fully corroborated by the medical evidence of P.W. 5. Learned counsel further submitted that admittedly there was enmity between the accused and the informant side and it is well established

that the enmity is double edged weapon which cuts both ways and it can be cause of false implication as well as it can be cause of commission of offence. Learned counsel further submitted that the first information report is prompt and non recovery of any weapon of offence cannot be a ground to discard the otherwise trustworthy eye witnesses. He further submitted that other witness are formal in nature and the prosecution has been abled to prove its case against the surviving appellant Suresh beyond the shadow of reasonable doubt and appeal lacks merit and deserves to be dismissed.

30. In a recent judgment of **Dheer Singh and Others vs State of U.P. , 2025 (4) ADJ 791**, a co-ordinate Bench of this Court, of which one of us (Vivek Kumar Birla, J.) was a member has considered the law as to why a realistic approach has to be adopted by Criminal Courts, which appreciating evidence in Criminal trial. The law in respect of injured, related and interested witness was also considered extensively, paragraph nos.22 to 35 whereof reads as under:-

"22. In Krishna Mochi and others vs. State of Bihar, (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."

(Emphasis supplied)

23. In Masalti vs. State of U.P., AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

24. In Darya Singh vs. State of Punjab, AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A

witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

25. In Appabhai and another vs. State of Gujarat, AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

"11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

26. Similar view has been taken in State of A.P. vs. S. Rayappa and others, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

27. In Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely

related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

28. In Satbir Singh and others vs. State of U.P., (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon ..... "

(Emphasis supplied)

29. In Jayabalan vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC), the Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(Emphasis supplied)

30. In Dharnidhar vs. State of U.P., (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The

primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

13. Similar view was taken by this Court in Ram Bharosey v. State of U.P. [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over-board, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called `interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

31. In a very recent judgement rendered by Hon'ble Apex Court in Baban Shankar Daphal and others vs. The State of Maharashtra, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and

coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

32. In a recent judgement rendered by Hon'ble Apex Court in Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

29. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

29.6. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

29.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

29.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

29.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

29.10. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

29.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub- conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(Emphasis supplied)

33. Paragraph 48 of Pahalwan Singh and others vs. State of U.P., 2020 (6) ALJ 166 is quoted under:

"48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story.

But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

34. Insofar as the testimony of injured witness is concerned, this Court in Kaptan Singh vs. State of UP, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

"20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. Theyhave been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In Jarnail Singh v. State of Punjab, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of Krishan v. State of Haryana, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 Baleshwar Mahto and another v. State of Bihar and another, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness."[Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], Bonkya v. State of

Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) "28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15) "15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by

one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject." In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694, the Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

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(Emphasis supplied)

35. In a recent judgement rendered by Hon'ble Apex Court in Neeraj Sharma vs. State of Chhattisgarh, (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

22. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial."

23. In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which

normally creep due to loss of memory with passage of time should be discarded."

31. The incident is said to have taken place on 17.9.1984 at 1:30 PM and the first information report has been lodged on the same day at 5:30 P.M. The surviving appellant as well as four other co-accused, namely, Jawahar, Harswarup, Bhagat Singh and Tulsi have been assigned the role of firing by their respective fire arms whereas sixth person whose name has not been shown in the first information report but he could be identified by face is said to have assaulted the deceased with ballam (spear) and at the time of the incident, the deceased Charan Singh is said to be sitting on the driver seat of the tractor and he was ploughing the field by the said tractor.

32. We have also noticed the fire arm injuries sustained by the deceased Charan Singh as has been proved by P.W. 5 Dr. P.P. Pathak who conducted the post mortem of the deceased. The following injuries have been found on the postmortem report of the deceased, Charan Singh-

1. Firearm wound of entry 4 cm x 3 cm x cavity deep on right side with multiple firearm wounds of entry in an area of 10 cm x 6 cm on right side of forehead size varying .2 cm x.2cm muscle deep Blackening and tattooing present.

2. Firearm wound of entry 2 cm x 2 cm cavity deep on front side of the left of chest 8 cm medical to left nipple blackening and tattooing present.

3. Firearm wound of entry 2 cm x 2 cm x cavity deep on front of the right chest 6 cm medical and above right nipple. Blackening and tattooing present.

4. Firearm wound of entry 2 cm x 2 cm on front of left abdomen 11 cm above the umblicus. Blackening and tattooing present.

5. Firearm wound of exit 4 cm x 4 cm x cavity deep on back of the left side of the chest middle part just lateral to mid line continuing to injury no. 2.

6. Punctured wound 3 cm x 1 cm x cavity deep on the outer side of the right side of chest 10 cm below right axilla in mid axillary line,

7. Punctured wound 3 cm x 1 cm x cavity deep on outer side of the left of the chest 5 cm below of left axilla in axillary line,

8. Incised wound 1 cm x 1/2 cm x muscle deep on front and outer side of the left arm lower part obliquely.

9. Incised wound 2 cm x 1/2 cm x muscle deep on inner aspect of the left arm upper part.

From the injuries received by the deceased the direction of none of the injuries is upward and we find force in the submissions of the learned counsel for the applicant that when the deceased was sitting on the driving seat of the tractor and accused persons are said to have opened fire from the ground level by their respective weapons, the direction of the wound must have been upward, that is not so, therefore the prosecution case on this point appears to be inconsistent.

33. P.W. 3, P.W. 4 and P.W.6 eye witnesses have stated that they did not get down the deceased from the tractor after the assailants left the place. They have also stated that they did not touch the dead body of the deceased and P.W. 3 and P.W. 6 are brother of the deceased and P.W. 4 is also near relative, therefore the conduct of all the three eye witnesses is highly unnatural.

34. So far as conduct of eye witnesses are concerned that they did not try to get

down dead body of the deceased, is unnatural and makes their presence at the place of occurrence highly doubtful.

35. We also find force in the argument of the learned counsel for the appellant that when five persons were armed with various fire arms and all of them opened fire on the deceased then there was no occasion for the sixth person to assault him with ballam (spear). The fire arm injuries sustained by the victim was sufficient to cause his death. Injury no.8 and 9 of the deceased has been caused by sharp edged weapon which would not have been caused by Ballam. Injury no. 8 and 9 of the deceased are unexplained.

36. It has also come in the testimony of P.W. 3 the eye witness that blood of the deceased did not fall on the soil whereas the investigating officer, P.W. 7 has stated in his statement that he collected the blood-stained soil. Further no empty cartridges are said to have been recovered from the place of occurrence and no sign of any fire arm shot has been found on the tractor. P.W. 3 has been specifically cross examined on the point that deceased was having enmity with other persons and due to that enmity he has been murdered by some unknown persons which he has denied but P.W. 3 has admitted that Mohan Lal who was an accused in the murder of the father of the deceased and convicted in the said case of murder and he came out from jail after spending the sentence awarded to him.

37. Similarly P.W. 4 has stated in his cross examination that he himself did not go to the investigating officer to tell him that he had seen the occurrence. He did not disclose any reason for the above.

38. Similarly P.W. 6 has admitted in his cross examination that the deceased was his real brother and the tractor which he was using was in the joint possession of the deceased, himself and P.W. 3 and all the three persons were jointly paying the instalments of the loan of the said tractor. P.W. 6 has admitted and stated in his cross examination that he had extended help in getting down the deceased from the tractor and the clothes of the deceased were soaked in blood but his clothes were untouched by blood which also raises doubt on the veracity of the statement of this witness.

39. Other witnesses are formal witnesses. P.W. 1 is the Head Constable Deen Dayal who has proved the chick FIR and GD entry, P.W. 2 Head Constable Ram Naresh has accompanied the daroga for inquest proceeding of the deceased whereas P.W. 7 Rajendra Singh Tomar is investigating officer of the case.

40. It is also pertinent to mention that nothing incriminating has been recovered from the possession of any of the accused persons and no recovery of any fire arm has been effected at their instance.

41. C.W. 1 Satyendra Prakash is record keeper of collectorate Mathura who has deposed to the effect that radiogram was received which was entered into register regarding the murder of deceased Charan Singh on 17.9.1984 and the said radiogram was entered at serial no. 1245.

42. So far as the defence witnesses are concerned D.W.1 Kishan Chanda JA-2 collectorate Mathura has proved that as per record no specific report has been received by the District Magistrate while D.W. 2 K.K. Matre, Agricultural Finance Officer,

Central Bank of India has proved that Tractor No. UJO7574 was in the name of Kunwar Pal, Charan Singh and Kishan Dutt and loan was advanced on 12.6.1979 and last installment was paid on 25.6.1984 thereafter no installment was paid.

43. D.W. 3 Hari Singh Head Operator, 2/c DCR, Police lines Mathura he had stated that the record of the radiogram sought from him, has not been brought by him as the relevant records has already been summoned. D.W. 4 Javhari Prasad has proved the register in which inquest of the deceased was entered.

44. We find from the over all appreciation of the evidence that the conduct of the eye witness P.W. 3, P.W. 4 and P.W. 6, who are near relatives of the deceased, in not touching the dead body of the deceased after the incident and not trying to get the dead body of the deceased down, is highly unnatural.

45. Further eye witnesses P.W. 3, 4 and 6 have stated that no blood fell on the soil whereas investigating officer P.W. 7 has collected the blood-strained soil also makes the prosecution story inconsistent. Moreover the dimension and size of the injuries received by the deceased also does not correspond to the eye witnesses account as there is no upward mark of fire arm injury on the person of the deceased. It is the defence case that Mohan Lal was convicted for the murder of the father of the deceased and he had spent considerable time in the jail and he had come out and therefore it is quite possible that murder of the deceased could have been committed by the said Mohan Lal. The fact that Mohan Lal was convicted for the murder of the father of the deceased has been admitted by P.W. 3 the informant who was also the brother of the deceased has been committed by P.W. 3. We, therefore, find that presence of eye witnesses P.W.3, P.W.4 and P.W.6 at the place of occurrence is highly doubtful and the defence has been successful in raising the doubt that it was not the accused persons who committed the offence but it might be some other persons who had committed the offence.

46. From the above, we find that the prosecution has failed to prove its case against the surviving appellant Suresh beyond the shadow of reasonable doubt and the appellant Suresh is entitled to benefit of doubt.

47. We, therefore, find that the judgement of conviction and order of sentence passed by the learned trial court against the appellant is not justified and appellant Suresh deserves to be acquitted of the charge levelled against him and judgement of conviction and order of sentence is liable to be set aside and appeal is liable to be **allowed.**

48. In view of the above, we allow this appeal and set aside the order of conviction and sentence passed by the learned trial court against appellant Suresh in Session Trial No. 15 of 1985.

49. If the surviving appellant, namely, Suresh is on bail, he need not surrender. His bail bonds are cancelled and sureties are discharged.

50. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance within a week.

51. The Chief Judicial Magistrate, Mathura is also directed to send his

compliance report within two months to this Court.

52. The trial court record be sent to the concerned Court forthwith.

(2025) 9 ILRA 712
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 497 of 2025

Pawan Kumar (Corpus) & Anr.
...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
In Person, Mohd Salman , Nazia Nafees

Counsel for the Respondents:
G.A.

Issue for Consideration

Whether the Court in a Petition for a Writ of Habeas Corpus can consider the legality of the detention of petitioner even though the detention is by a judicial order and whether a Writ of Habeas Corpus is to be issued directing the release of petitioner no. 1 because the Board vide its order dated 15.5.2025 has declared the petitioner a juvenile on the date the crime was committed?

Head Notes

The Juvenile Justice (Care and Protection of Children) Act, 2015- Section 1(4),2,3,6,9,10,14,15,18,19,20 ; The Juvenile Justice (Care and Protection of Children) Model Rules, 2016;The Constitution of India,1950-Article 226- No claim that he was a child / juvenile at the time the offence was committed was raised by petitioner when he was initially produced before the Magistrate after being apprehended. The records show that the claim was, for the first time, raised by the petitioner before the trial court after charges were framed- The initial detention of petitioner as a consequence of a judicial order may not have been illegal. But, in light of Section 9(4) of the Act, the detention of petitioner no. 1 in jail became illegal after he raised a claim that he was a child at the time the offence was committed. Writ petition partly allowed.

Held- The validity of the present detention can be examined and a writ would be issued even where the initial detention was legal and valid but the present detention was found to be illegal. (E-15)
(Para 34)

Case Law Cited

Manubhai Ratilal Patel Through Ushaben vs. State of Gujarat & Others (2013) 1 SCC 314; Kanu Sanyal vs. District Magistrate, Darjeeling & Others (1974) 4 SCC 141. Sapmawia vs. Deputy Commissioner, AIJAL (1970) 2 SCC 399; Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors. (2022) 8 SCC 602

List of Acts

The Juvenile Justice (Care and Protection of Children) Act, 2015; The Juvenile Justice (Care and Protection of Children) Model Rules, 2016; The Constitution of India,1950

List of Keywords

Detention of petitioner; Juvenile Justice Act; Section 9 (4); initial detention was legal; Present detention found illegal;

Case Arising From

The present petition for writ of habeas corpus has been filed for release of petitioner no. 1 from Naini Central Jail, Prayagraj pleading that the detention of petitioner no. 1 in Naini Central Jail is illegal and violates his fundamental rights under Article 21 of the Constitution of India.

Appearances for Parties

Counsel for Petitioners(s) : In Person,Mohd Salman,Nazia Nafees

Counsel for Respondent(s): G.A

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

1. The present petition for writ of habeas corpus has been filed for release of petitioner no. 1 from Naini Central Jail, Prayagraj pleading that the detention of petitioner no. 1 in Naini Central Jail is illegal and violates his fundamental rights under Article 21 of the Constitution of India.

2. The petition has been filed by petitioner no. 2 on behalf of petitioner no. 1. The petitioner no. 2 claims herself to be a social worker involved in protecting legal rights of juvenile, women and down trodden of the society. The petitioner no. 2 claims that she has been honoured for her acts by the District Administration and Judicial Authorities.

3. The relevant facts of the case are that on 1.4.2017, Case Crime No. 0195 of 2017 under Section 302 of the Indian Penal Code was registered against the petitioner no. 1 as well as against his elder brother and mother at Police Station Tharwai, District Allahabad with the allegation that petitioner no. 1, along with his mother and other brother, had beaten to death his eldest brother. The petitioner no. 1, along with other accused, was arrested by the police on 2.4.2017 and was detained in Naini Central Jail, Prayagraj. Charge-sheet in the case was filed on 21.5.2017 and the Chief Judicial Magistrate, Allahabad vide his order dated 5.7.2017 committed the case for trial to the Sessions Court. The trial is at present pending before the Additional Sessions Judge / Special Judge (M.P. / MLA), Prayagraj. Charges in the case were framed by the trial court on 17.11.2017. Before the trial court, the petitioner no. 1 claimed that he had studied till Class - V in Primary School, Bhogatpur, Police Station Tharvai, District Prayagraj and his date of birth was 13.12.2002. In order to verify the claim of petitioner no. 1, the trial court summoned the Principal of the school. The Principal appeared before the trial court and produced the scholar register in which the date of birth of petitioner no. 1 was recorded as 13.12.2002. The date of birth of petitioner no. 1 as recorded in the scholar register showed that petitioner no. 1 was 14 years, 3 months and 19 days on the date the crime was committed. The trial court, through its letter dated 18.7.2024, forwarded the matter to the Juvenile Justice Board (hereinafter referred to as, 'Board'), Khuldabad, Prayagraj for appropriate orders. It is to be noted that no order passed by the trial court determining the age of petitioner no. 1 or examining either the evidentiary value of the entries in scholar register or the veracity of the statement of the Principal has been brought on record before this Court. The Board, after considering the scholar register and after recording the statement of the Principal, held that, on the date the offence was committed, petitioner no. 1 was 14 years, 3 months and 19 days. Consequently, an order dated 15.5.2025 was passed by the Board declaring the petitioner no. 1 juvenile on the date the offence was committed and a copy of the said order was forwarded to the trial court and also to the Superintendent, District Jail Naini, District Prayagraj. However, the petitioner no. 1 is still in detention in Naini Central Jail, Prayagraj even though no case other than the one referred above is registered against him. Thus, the present petition for the relief noted above.

4. It has been argued by the counsel for the petitioner that in view of Section 18

of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, 'Act, 2015'), a juvenile can remain in custody for a maximum period of three years and because the petitioner no. 1 has been in custody for almost eight years, therefore, in any case, the present detention of petitioner no. 1 is illegal and unconstitutional and violates his fundamental rights under Article 21 of the Constitution of India. It has been pleaded that because the petitioner no. 1 has not been released from jail despite the order dated 15.5.2025 passed by the Board, therefore, a writ of habeas corpus be issued directing the release of petitioner no. 1 from jail.

5. Sri Paritosh Kumar Malviya, the Additional Government Advocate (hereinafter referred to as, ;AGA') has opposed the petition. The objections of AGA is that the detention of petitioner no. 1 in Naini Central Jail is by a judicial order, the validity of which cannot be considered in a petition for a writ of habeas corpus, therefore, the petition is not maintainable and is liable to be dismissed. It has been argued by the AGA that the petitioner no. 1 has the statutory remedy to apply for bail available to a child in conflict with law.

6. We have considered the rival submissions of the counsel for the parties.

7. The issue in the present petition is whether the Court in a Petition for a Writ of Habeas Corpus can consider the legality of the detention of petitioner no. 1 even though the detention is by a judicial order and whether a Writ of Habeas Corpus is to be issued directing the release of petitioner no. 1 because the Board vide its order dated 15.5.2025 has declared the petitioner no. 1 a juvenile on the date the crime was committed.

8. It would be appropriate that the objections of the AGA to the maintainability of the petition be considered first.

9. So far as the contention of AGA that the validity of a judicial order authorizing detention of any person cannot be examined in a petition of habeas corpus is concerned, it would be apt to refer to the judgment of the Supreme Court in **Manubhai Ratilal Patel Through Ushaben vs. State of Gujarat & Others (2013) 1 SCC 314**. In paragraph - 31 of the aforesaid judgment, the Supreme Court observed as follows : -

"31. *... (T)he order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law.* ***It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal.*** *As has been stated in the cases of B. Ram Chandra Rao and Kanu Sanyal,* ***the court is required to scrutinize the legality***

or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. *It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated.* ***Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law.***

(emphasis supplied)

10. It is apparent from the observations of the Supreme Court reproduced above that in a habeas corpus petition, the legality of the detention order can be examined to ascertain whether the order suffers from a lack of jurisdiction or is absolutely illegal or has been passed in a wholly mechanical manner. If the order detaining the person is without jurisdiction or is absolutely illegal or has been passed in a mechanical manner, a writ of habeas corpus directing the release of the detenue would be issued.

11. Moreover, there may be cases where the detention of a person may be invalid initially but, for some reason, may subsequently become valid. Similarly, there may be cases where the detention of a person may have been valid initially but, for some reasons, may subsequently become invalid. In a petition of habeas corpus the legality of present detention is examined and the legality of detention prior to filing of the petition is not relevant. In the aforesaid context, it would be relevant to refer to the judgments of the Supreme Court in **Manubhai Ratilal Patel** (supra) and **Kanu Sanyal vs. District Magistrate, Darjeeling & Others (1974) 4 SCC 141.**

12. In **Kanu Sanyal** (supra), the Supreme Court, after referring to its earlier judgments on the issue as to which date would be relevant to examine the legality of detention challenged in a habeas corpus proceeding, observed as follows : -

"4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. *This Court speaking through Wanchoo, J., (as he then was) said in A. K. Gopalan v. Government of India :*

"It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing".

In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab, and Ram Narain Singh v. State of Delhi a slightly different view was expressed and that view was reiterated by this Court in B. R. Rao v. State of Orissa, where it was said 9 (at page 259, para 7) :

"in habeas corpus proceedings the Court is to have regard to the legality

or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings".

and yet in another decision of this Court in Talib Husain v. State of Jammu & Kashmir, Mr. Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at page 121, para 6) :

"in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing".

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because ***an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus.*** *But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and* ***the Court is not, to quote the words of Mr. Justice Dua in B. R. Rao v. State of Orissa (supra), "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus".*** *Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Visakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Visakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Visakhapatnam. See para 7 of the judgment of this Court in B. R. Rao v. State of Orissa (supra). The legality of the detention of the petitioner in the Central Jail, Visakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them.″*

(emphasis supplied)

13. Similarly, the Supreme Court in **Manubhai Ratilal Patel (supra)** after referring to **Kanu Sanyal** (supra) held in Paragraph no. 21 of the reports that **'any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the subsequent detention has to be judged on its own merits.'**

14. In **Kanu Sanyal** (supra) and **Manubhai Ratilal Patel** (supra) the detenue had pleaded that the initial detention and consequently, the continuation of the detention and the present detention was invalid but the Courts held that any illegality in the initial detention, would not by itself, be sufficient to invalidate the subsequent or present detention, i.e., the detention at the time the petition for Habeas Corpus was considered. The principle of law that can be derived

from the judgments of the Supreme Court in **Kanu Sanyal** (supra) and **Manubhai Ratilal Patel** (supra) is that in a Habeas Corpus petition, it is the legality of the present detention which is to be examined and the merits of the detention before the filing of the petition is not relevant in a habeas corpus petition.

15. As a corollary to the aforesaid it can be held that in a Habeas Corpus petition, the validity of the present detention can be examined and a writ would be issued even where the initial detention was legal and valid but the present detention was found to be illegal. At this stage, it would also be relevant to refer to the judgment of the Supreme Court in **Sapmawia vs. Deputy Commissioner, AIJAL (1970) 2 SCC 399** wherein the Court had directed the release of the detenue on the ground that his continued detention was illegal even if the initial detention was valid in law. The observations of the Supreme Court in Paragraph - 9 of the aforesaid judgment are relevant and reproduced below : -

"9. The last order of remand as disclosed to this Court is dated February 2, 1970, but that order is silent as to for how many days the petitioner was remanded and it also does not in terms authorise the authorities of Dibrugarh Jail to keep the petitioner in their custody. Reasons for keeping him in jail custody are also not stated. ***I am, however, prepared to assume that the remand was to be in the custody of the Superintendent, Dibrugarh Jail. The question, however, arises under which process of law was the order of remand made?*** *The State Counsel was unable to throw any light in this connection and he admitted that he was not in a position to make any positive statement. Further assuming that the order of remand was by a Magistrate during the course of the investigation it could not, under 'the Code of Criminal Procedure, extend beyond a term of 15 days. There was no suggestion on behalf of the State counsel that any special law authorised a remand for a longer period in this case. Even the order of the High Court directed the investigation to be completed within two months. These two months expired a long time ago. In the return, though it is asserted that the investigation was complete by March 20, 1970 and sanction is also stated to have been obtained on May 12, 1970, no order by a Magistrate authorising the petitioner's detention in custody has been produced. In these circumstances I am constrained to hold that the* ***petitioner's present custody in Dibrugarh Jail*** *has not been shown to be in accordance with the procedure established by law."*

(emphasis supplied)

16. Before proceeding further, it would be appropriate to refer to certain provisions of the Act, 2015 relevant to decide the legality of the present detention of petitioner no. 1.

17. The Act, 2015 came in force w.e.f. 15.1.2016 and was in force on the date the crime was committed.

18. Section 1(4) of the Act, 2015 starts with a non-osbtante clause and provides that **'notwithstanding anything contained in any other law for the time being in force**, the provisions of the Act shall apply to all matters concerning the children in conflict with law including **apprehension, detention,** prosecution, penalty **or imprisonment** of children in conflict with

law′. Juvenile has been defined in Section 2(35) to mean a child below the age of eighteen years. Child has been defined in Section 2(12) of the Act, 2015 to mean a person who has not completed eighteen years of age and **a child in conflict with law is defined in Section 2(13) as a child who is alleged or is found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.** Section 2(54) of the Act, 2015 defines 'serious offences′ to include offences for which punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years. **Section 2(33) of the Act, 2015 defines 'heinous offfences′ to include offences for which minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.** Section 2(46) of the Act, 2015 defines 'place of safety′ to mean any place or institution, **not being a police lockup or jail**, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the child alleged or found to be in conflict with law, by an order of the Board or the Children′s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

19. Section 3 of the Act, 2015 prescribes the general principles to be followed in the administration of the Act and provides that the Central Government, the State Governments, the Board, **and other agencies** while implementing the provisions of the Act, 2015 shall be guided by the fundamental principles enumerated in said provision. **Section 3(ix) of the Act, 2015 provides that no waiver of any of the right of the children is permissible or valid, whether sought by the children or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.**

20. Section 6 (1) of the Act, 2015 provides that 'any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of Section 6, be treated as a child during the process of inquiry′. Section 6(2) of the Act, 2015 states that 'the person referred to in sub-section (1), if not released by the Board shall be placed in a place of safety during the process of inquiry and shall be treated as per the procedure specified under the provisions of the Act, 2015′.

21. Section 9 of the Act, 2015 provides as follows : -

"9. ***Procedure to be followed by a Magistrate who has not been empowered under this Act. -*** *(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and* ***forward the child immediately along*** *with the record of such proceedings* ***to the Board*** *having jurisdiction.*

(2) In case a person alleged to have committed an offence ***claims before a court other than a Board****, that the person is a child or was a child on the date of commission of the offence, or if the court*

itself is of the opinion that the person was a child on the date of commission of the offence, the ***said court shall make an inquiry, take such evidence as may be necessary*** *(but not an affidavit)* ***to determine the age of such person, and shall record a finding on the matter****, stating the age of the person as nearly as may be:*

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) ***If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.***

(4) In case a person under this section ***is required to be kept in protective*** *custody, while the person's claim of being a child is being inquired into, such person may be placed,* ***in the intervening period in a place of safety.***"

(emphasis supplied)

22. Section 10(1) provides as follows: -

"10. Apprehension of child alleged to be in conflict with law. - *(1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:*

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail."

(emphasis supplied)

23. The prohibition contained in the proviso to Section 10(1) is also incorporated in Rule 54 (8) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

24. Sections 14, 15 and 18 of the Act, 2015 contain provisions for inquiry by the Board regarding the child in conflict with law. The relevant parts of Sections 14 and 15 are reproduced below : -

*"**14. Inquiry by Board regarding child in conflict with law. -** (1)*

Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) ...

(3) ...

(4) ...

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:-

(a) ...

(b) ...

(c) ...

(d) ...

(e) inquiry of serious offences shall be disposed of by the Board, by

following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,-

(i) for child ***below the age of sixteen years*** *as on the date of commission of an offence shall be disposed of by the Board under clause (e);*

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

15. Preliminary assessment into heinous offences by Board.- *(1)*

In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.-For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

...
...″

25. Section 18 of the Act, 2015 provides as follows : -

"18. ***Orders regarding child found to be in conflict with law. -*** *(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-*

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) ***direct the child to be sent to a special home, for such period, not exceeding three years****, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:*

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) ***Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."***

(emphasis supplied)

26. At this stage, it would also be relevant to reproduce Sections 19 and 20 of the Act, 2015 which deal with the powers of Children's Court where the Board passes an order that there is need for trial of the child as an adult : -

"19. ***Power of Children's Court. -*** *(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that-*

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) ***there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.***

(2) ***...***

(3) ***The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:***

...

(4) ...

(5) ...

20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety. - (1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, *the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformative changes and if the child can be a contributing member of*

the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may-

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) ***decide that the child shall complete the remainder of his term in a jail:***

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.″

(emphasis supplied)

27. A reading of the aforesaid provisions shows that the Act, 2015 has an overriding effect over any other law for the time being in force in all matters concerning the child in conflict with law especially in matters regarding apprehension, detention, prosecution or imprisonment of the child in conflict with law. No waiver of the rights of the child in conflict with law as provided under the Act, 2015 is permissible and any non-exercise of fundamental right shall not amount to waiver. Further, any person who has committed an offence when he was below the age of eighteen years shall be treated as a child during the process of inquiry even if he has completed eighteen years of age when he was apprehended or completes the age of eighteen years during the course of inquiry by the Board or the Children's Court or any other agency.

28. A reading of Section 9 of the Act, 2015 shows that if a person accused of committing an offence **claims before a court** that he was a child on the date of commission of the offence, **the court shall make** an inquiry and after taking such evidence as may be necessary, **determine the age** of the person and **shall record a finding on** the matter stating the age of the person as nearly as may be. In case, the court finds that the person was a child on the date of commission of the offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect. It is apparent from a reading of Sections 9(2) and 9(3) of the Act, 2015 that the claim of being a child shall be decided by the Court and not the Board if the claim is raised before the Court. The phrase 'appropriate orders' in Section 9(3) refers to orders under Sections 14 and 18 of the Act, 2015 and does not confer power on the Board to determine the age of a person who raises his claim of being a child before a Court. The Board has the power to determine the age of the person claiming himself to be a child only in cases covered under Section 9(1) and Section 10(1), i.e., when the child, after being apprehended, is produced before the Board or where the Magistrate under Section 9(1) forwards the child to the Board and not in cases covered under Section 9(2) where the person alleged to have committed the offence claims in a 'Court' that he was a child at the time of the commission of offence.

29. The aforesaid view is supported by the decision of the Supreme Court in **Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors. (2022) 8 SCC 602.** The observations of the Supreme Court in Paragraph nos. - 33.1 to 33.2.2 of the

aforesaid judgment are reproduced below : -

33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the Court or the JJ Board.

33.2.1. When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 *but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.*

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.″

(emphasis supplied)

30. In the present case, the offence was committed on 1.4.2017. The petitioner no. 1 is an accused in the offence. The offence alleged to have been committed is a heinous offence as defined in the Act, 2015. A charge-sheet was filed in the case on 21.5.2017. The case was committed to trial on 5.7.2017 and the trial is, at present, pending in the court of Additional Sessions Judge / Special Judge (M.P. / MLA), District Allahabad. The claim that petitioner no. 1 was a child on the date the offence was committed was raised by petitioner no. 1 before the Court after charges were framed and during trial. The claim was not raised before the Magistrate. The petitioner no. 1 was not produced before the Board under Section 10(1). The case of petitioner no. 1 is covered by Section 9(2). There is nothing on record to show as to whether the trial court has passed any order under Section 9(2) determining the age of petitioner no.1. The trial court has not determined the age of petitioner no. 1 as required under Section 9(2) but has, mechanically and in a routine manner, through letter dated 18.7.2024 remitted the matter to the Board after referring to the claim of petitioner no. 1. There is no finding by the trial court regarding the age of petitioner no. 1. The letter dated 18.7.2024 of the trial court and its contents cannot be considered an order.

31. In light of the observations made before, the order dated 15.5.2025 passed by the Board determining the age of petitioner no. 1 is without jurisdiction and a nullity. The order of the Board confers no right on the petitioner no. 1. We cannot issue any writ which would amount to enforcement of the order of the Board.

32. A perusal of Section 10 show that in no case can a child in conflict with law be placed in a police lock up or lodged in a jail. A person who claims himself to be a child under the Act, 2015 can not be lodged in a jail or police lockup even during inquiry regarding his age either by the Court or the Board. A child in conflict with law can be lodged in jail only when he has committed a heinous offence and is also above the age of sixteen years on the date of the commission of offence and the Board after preliminary assessment under Section 15 of the Act, 2015 and the Children′s

Court under Section 19(1)(i) decide that there is need for trial of the child as an adult and further, the child found to be in conflict with law has attained the age of twenty one years but is yet to complete the term of stay at a place of safety. By virtue of Section 9(4), in case a person claims before a Court that he was a child on the date the offence was committed and the person is required to be kept in protective custody during the process of inquiry, the Court while inquiring into his claim may place him in a place of safety.

33. In short, a child in conflict with law or alleged to be in conflict with law cannot be lodged in a jail till he attains twenty one years of age either during the inquiry regarding determination of his age or when he is found to be a child in conflict with law.

34. No claim that he was a child / juvenile at the time the offence was committed was raised by petitioner no. 1 when he was initially produced before the Magistrate after being apprehended. The records brought before this Court show that the claim was, for the first time, raised by the petitioner no. 1 before the trial court after charges were framed. In the circumstances, the initial detention of petitioner no. 1 as a consequence of a judicial order may not have been illegal. But, in light of Section 9(4) of the Act, the detention of petitioner no. 1 in jail became illegal after he raised a claim that he was a child at the time the offence was committed.

35. At this stage, it would also be apt to consider the contention of the Additional Government Advocate that the petitioner no. 1 is entitled to seek bail under the relevant statute. The said contention is also not acceptable. The petitioner no. 1, if he is a child in conflict with law, cannot be put on trial before the criminal courts. The petitioner no. 1 would have been entitled to apply for bail under Section 12 of the Act, 2015.

36. Section 12 of the Act, 2015 provides for bail to a child alleged to be in conflict with law. Section 12 is reproduced below : -

"12. ***Bail to a person who is apparently a child alleged to be in conflict with law.*** *(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:*

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

37. A reading of Section 12 shows that a child in conflict with law would be entitled to bail if he is detained by the police or is produced before the Board. The petitioner no. 1 has still not been produced or forwarded to the Board.

38. In view of the aforesaid, the petitioner no. 1 cannot apply for bail before the Board under Section 12 of the Act, 2015. At this stage when the inquiry regarding the age of petitioner no. 1 is still pending, it is only the trial court which is empowered to decide whether the petitioner no. 1 is entitled to be kept in any preventive custody and in a place of safety.

39. Apparently, the present detention of petitioner no. 1 in Naini Central Jail, Prayagraj is illegal. Thus, a writ of habeas corpus is to be issued for release of petitioner no. 1 from Naini Central Jail.

40. In view of the aforesaid, we direct as follows : -

1. The Jail Superintendent, Naini Central Jail, Prayagraj is directed to set at liberty the petitioner no. 1, i.e., Pawan Kumar.

2. The respondent no. 3, i.e., the Commissioner of Police, Prayagraj shall ensure that the petitioner no. 1 is produced before the trial court which shall determine the age of the petitioner at the time of the commission of offence in accordance with Section 9(2) of the Act, 2015.

3. In case, the trial court is of the opinion that during the process of inquiry regarding his age the petitioner no. 1 is required to be kept in preventive custody, he may be placed by the trial court during the intervening period in a place of safety as defined in Section 2(46) of the Act, 2015.

4. If the trial court records a finding that on the date of the commission of offence, the petitioner no. 1 was a child in conflict with law, the petitioner no. 1 shall be forwarded to the Board which shall take appropriate action in accordance with Sections 14, 15 and 18 of the Act, 2015 depending on whether the age of petitioner no. 1 as determined by the trial court was below or above 16 years of age on the date of commission of offence. Needless to say that in case, the trial court records a finding that the petitioner no. 1 was not a child on the date the crime was committed, the trial court shall proceed with the trial in accordance with law.

41. With the aforesaid directions, the writ petition is **partly allowed.**

42. A copy of this order shall be sent by the Registrar (Compliance) to the Commissioner of Police, Prayagraj and the Jail Superintendent, Naini Central Jail, Prayagraj within 24 hours.

(2025) 9 ILRA 726
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE MANJU RANI CHAUHAN, J.

Writ A No. 3471 of 2025

Smt. Meena Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Aishwarya Pratap Shahi, Nipun Singh

Counsel for the Respondents:
Ashish Kumar Singh, Ashutosh Mishra, C.S.C.

Issues for consideration

(a) Whether the conduct of the petitioner amounts to misconduct?
(b) Whether a disciplinary action actuated by bias or based on mere suspicion can be sustained?

Headnotes

A. Service Law - Any administrative or disciplinary proceeding tainted by mala fides or actuated by bias cannot be sustained in the eyes of law. Proceedings initiated with a predetermined mind or mala fide intent stand vitiated. Arbitrariness or malice in law, even in administrative actions, strikes at the root of legality. (Para 57)

In the present case, it is evident that the proceedings against the petitioner were not guided by lawful consideration but were the direct outcome of personal enmity and vindictiveness, thereby rendering the same wholly unsustainable in law. (Para 59)

It is a clear case of unnecessary harassment of the petitioner, as all proceedings against her were initiated only after she lodged a complaint against the Registrar. Significantly, the proceedings were founded upon a complaint allegedly made by a person who, in fact, had not filed it. This sequence of events unmistakably reflects the conduct of the Registrar, who continued in service with the University, whereas the petitioner has been removed from employment. (Para 52, 55, 56)

B. Misconduct must involve a wrongful act or a willful omission which is blameworthy and not merely an error of judgment or inadvertence. (Para 54)

A mere assertion of pursuing higher studies does not amount to a false claim of possessing the said qualification. Unless there is a clear, deliberate, and conscious misrepresentation with intent to secure an undue advantage, the same cannot constitute misconduct. The petitioner has merely stated that she is pursuing Ph.D.. At no stage has she either produced any document or made a categorical claim that she had completed Ph.D. course. The alleged fact was specifically denied before the enquiry officer as well. Despite this, the petitioner has been held guilty of misconduct. Such a finding cannot be sustained in the eyes of law. (Para 53)

Even if it is assumed that the petitioner had mentioned in her application that she was pursuing a Ph.D. and had prefixed 'Dr.' to her name, the same by itself cannot be construed as misconduct, particularly when these aspects have neither been examined nor established in the course of the enquiry. (Para 67)

C. There is no material available on record, nor has any finding been returned, **to establish that possession of a Ph.D. degree was ever prescribed as an essential qualification for appointment to the post of Private Secretary to the Vice-Chancellor or for promotion to the post of Staff Officer.** It further emerges that no guidelines or administrative instructions were in existence to suggest that a candidate holding a higher academic degree would be entitled to

any preference or advantage in the matter of appointment or promotion. (Para 60)

In these circumstances, there was neither occasion nor necessity for the petitioner to submit or rely upon a Ph.D. degree. (Para 61, 62)

D. Disciplinary action based on no evidence or mere suspicion cannot be sustained. No material has been produced to demonstrate that the petitioner ever derived or was conferred any advantage by mentioning in her application, at the time of her selection as Private Secretary to the Vice-Chancellor, that she was pursuing Ph.D. The authorities have proceeded merely on surmises and conjectures, and that too after the petitioner had rendered several years of unblemished and satisfactory service. (Para 63)

The bias of the authorities is evident from the fact that they have relied solely upon the allegations made by Mr. S.N. Tiwari, the officiating Registrar, against whom the petitioner had already lodged a complaint. Despite this, **the authorities proceeded to conduct an enquiry in complete disregard to the order dated 29.11.2023 passed by this Court passed in Writ-A No. 13696 of 2023.** This Court had issued no direction for holding a fresh enquiry. Nevertheless, the authorities, in disregard of the Court's order, constituted a three-member external committee to conduct an enquiry, which clearly reflects the *mala fide* intention of the authorities concerned. (Para 64)

Prior to the so-called complaint allegedly moved by one Vishnu Pratap Singh, which has in fact been denied by the complainant himself, **there had never been any grievance or allegation at any point of time regarding the work or conduct of the petitioner. On the contrary, her service was consistently found satisfactory and her integrity was duly certified.** The entire course of events took an adverse turn only after the petitioner lodged a complaint against the Registrar, followed by repeated enquiries, the last of which was conducted in a manner contrary to the directions issued by this Court. (Para 65)

Writ petition allowed. (E-4)

Case Law Cited

1. Vishaka Vs. State of Rajasthan, (1997) 6 SCC 241 (Para 19)

2. M.S. Bindra Vs. Union of India, (1998) 7 SCC 310 (Para 29)

3. B.C. Chaturvedi Vs. Union of India and others, (1995) 6 SCC 749 (Para 30)

4. Prem Nath Bali Vs. Registrar, High Court of Delhi and another, (2015) 16 SCC 415 (Para 30)

5. Ranjit Thakur Vs. Union of India and others, (1987) 4 SCC 611 (Para 31)

6. Colour-Chem Ltd. Vs. A.L. Alaspurkar and others, (1998) 3 SCC 192 (Para 31)

7. Sukhbir Singh Vs. The Deputy Commissioner of Police, New Delhi and others, 1984 SCC OnLine Del 18; (1984) 2 SLR 149 (Para 31)

8. Shankar Dass Vs. Union of India and another, (1985) 2 SCC 358; 1986 Supreme Court Cases (Cri) 242 (Para 31)

9. Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar, (2022) 17 SCC 361 (Para 34)

10. Kiran Thakur Vs. Resident Commissioner, Bihar Bhawan Neutral Citation, 2023 DHC 3459 (Para 34)

11. General Manager, Appellate Authority, Bank of India and another Vs. Mohd. Nizamuddin, (2006) 7 SCC 410; 2006 SCC (L&S) 1663; AIR 2006 SC 3290 (Para 49)

12. Ravi Yashwant Bhoir Vs. Collector, (2012) 4 SCC 407; 2012 SCC OnLine SC 237 (Para 50)

13. Union of India and others Vs. J. Ahmed, (1979) 2 SCC 286 (Para 54)

14. State of Punjab and others Vs. Ram Singh ExConstable, (1992) 4 SCC 54 (Para 54)

15. State of Punjab Vs. V.K. Khanna and others, (2001) 2 SCC 330 (Para 57)

16. Kumari Shrilekha Vidyarthi and others Vs. State of U.P. and others, (1991) 1 SCC 212 (Para 57)

17. Ramesh Chander Singh Vs. High Court of Allahabad and another, (2007) 4 SCC 247 (Para 57)

18. Union of India Vs. H.C. Goel, AIR 1964 SC 364 (Para 63)

19. Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570 (Para 63)

List of Acts/Commentaries

P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821.

List of Keywords

Service, promotion, terminated, regularized, appointment, suspension.

Appearances for Parties

For Petitioner: Aishwarya Pratap Shahi, Nipun Singh

For Respondent: Ashish Kumar Singh, Ashutosh Mishra, C.S.C.

(Delivered by Hon'ble Manju Rani Chauhan, J.)

1. The petitioner has preferred the present writ petition challenging an order dated 14.12.2024 passed by the Registrar, Gautam Buddha University, Greater Noida, Gautam Budh Nagar, whereby her services from the post of Private Secretary, have been terminated.

2. Facts of the case are that initially, the petitioner was appointed as Private Secretary1 to Vice Chancellor, Gautam Buddha University, Greater Noida, Gautam Budh Nagar2, on contractual basis on 08.07.2010. At the time of appointment, the petitioner was fully eligible for the post of PS as she was having M.Phil, M.Ed. and M.A. Degrees along with four years of experience. Her services were regularized by an order of the Vice Chancellor dated 13.04.2018. Later, the petitioner being eligible for promotion, was promoted vide order dated 18.09.2018 as Staff Officer to Vice Chancellor. The eligibility for promotion to the post of Staff Officer is 'Graduation', five years of continuous service in Gautam Buddha University in the Grade Pay of Rs. 4800 and good record of work.

3. The petitioner has been discharging her duties with utmost sincerity and devotion. She carried an impeccable reputation in the University. During her service period from 2010 to 2017, out of eight years, in seven she was awarded 'outstanding' remark in her annual assessment record and for one year as 'good'.

4. On 18.08.2020, the petitioner was suspended mentioning about a legal notice of one Vishnu Pratap Singh moved through Amit Kumar Agarwal, Advocate, alleging irregularities in her appointment as Private Secretary and promotion as Staff Officer. Aggrieved by the suspension order, the petitioner preferred **Civil Misc. Writ Petition No. 7156 of 2020**. Initially, the Court directed the University to file a counter affidavit and no interim order was granted. Finally, writ petition came to be disposed of with certain directions, on 21.09.2022.

5. Meanwhile, Sri S.N. Tiwari, the then Officiating Registrar, lodged a first information report against the petitioner through an application moved under Section 156(3) Cr.P.C., bearing Case Crime No. 166 of 2020, under Sections 420, 467, 468, 471 IPC. Aggrieved thereby, the petitioner preferred **Criminal Misc. Writ Petition No. 16275 of 2020**, which was

dismissed as not-pressed on 05.01.2021. Thereafter, the petitioner filed **Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 4389 of 2021**, which was allowed by order dated 06.04.2021. The matter was investigated and ultimately a final report was submitted in the said case, on 09.07.2021.

6. In terms of the suspension order, an enquiry committee comprising three faculty members, was constituted by an order dated 21.08.2020. Said order was appended with 'terms of reference' which mentioned five articles on the basis of charges levelled against the petitioner.

7. On 27.10.2020, the Vice Chancellor substituted the enquiry committee by appointing a single-member enquiry committee, who again served a new charge-sheet upon the petitioner. The petitioner made a request to the Presenting Officer through an e-mail dated 31.10.2020 requesting for providing supportive documents mentioned in Annexure-II to the said order dated 27.10.2020.

8. The petitioner submitted her first reply before the enquiry officer on 09.11.2020. On 21.12.2020, the enquiry officer was changed and in place of Dr. Sumati Verma, Sri Ravi Kant Sinha was appointed as enquiry officer. The petitioner appeared before the enquiry officer, on third date of hearing, which was scheduled for 25.01.2021. She sought time to produce some witnesses. Whereafter, she submitted supplementary reply / statement of defence on 06.03.2021, denying all the charges levelled against her. She also requested the enquiry officer to afford her an opportunity to cross-examine Sri S.N. Tiwari, however, her request was outrightly rejected. On 13.03.2021, Sri S.N. Tiwari appeared before the enquiry officer, but no access was given to the petitioner to cross-examine him. Petitioner also sought permission to produce Sri Umakant Ahirwar as her witness, but the request was turned down.

9. In the meantime, Sri S.N. Tiwari got a writ petition of quo-warranto being **Civil Misc. Writ Petition No. 18675 of 2020**, filed through a practising lawyer Sri Pankaj Kumar Kesharwani, before this Court, challenging the petitioner' s appointment. Said writ petition is still pending.

10. The petitioner was issued a second show cause notice on 27.09.2022, to which she submitted her reply on 10.10.2022. Said reply was examined and forwarded by the Senior Office Assistant to the Board of Management. On 01.11.2022, the petitioner received an e-mail from the Registrar of the University enclosing therewith her termination order dated 30.10.20226 purportedly passed by the Board of Management, without affording any opportunity to the petitioner.

11. First termination order was challenged by the petitioner by means of **Writ-A No. 19902 of 2022**, which was disposed of by this Court by order dated 08.12.2022, setting aside the termination order dated 30.10.2022 and granting liberty to the petitioner to submit a fresh reply to the second show cause notice dated 27.9.2022 within a period of three weeks. By the said order, the Board of Management was directed to communicate a short date for personal hearing to the petitioner and thereafter pass a fresh order in accordance with law within a period of two months from the date of compliance shown by the petitioner.

12. In compliance with the aforementioned order, the petitioner was

asked to appear before the Board of Management. She submitted her reply. However, without considering petitioner's written reply and oral submissions, an order dated 02.03.20238 was passed, again removing the petitioner's services. Challenging the said order dated 02.03.2023, the petitioner preferred **Writ-A No. 6339 of 2023**, which was disposed of by order dated 18.04.2023, directing the competent authority to hear the petitioner afresh, giving due consideration to her reply submitted before it, which the petitioner will be submitting within a period of two weeks, and pass a fresh order in the light of observations made therein, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of the order along with reply by the petitioner.

13. In terms of the aforesaid order dated 18.04.2023, the petitioner submitted her detailed reply along with supportive documents on 04.05.2023, wherein besides reiterating her earlier contentions, she specifically and emphatically asserted that the Ph.D. degree had no role either in her initial appointment or in her promotion. She also pleaded that she has been deprived of opportunity to cross-examine Sri S.N. Tiwari and that no oral evidence or witness proved the charges levelled in the enquiry report. On 14.06.2023, the petitioner appeared before the Board of Management and vehemently raised her contentions.

14. The Board of Management, in its meeting dated 14.06.2023, resolved to terminate the services of the petitioner and consequently, the order dated 27.06.202310 was passed by the Registrar of the University. Said termination order was challenged by the petitioner by means of **Writ-A No. 13696 of 2023**. This Court by order dated 29.11.2023 partly allowed the said writ petition with the following directions:

(a) The order dated 27.06.2023 as well as the minutes of the Board of Management, Gautam Buddha University, Greater Noida, Gautam Budh Nagar dated 14.06.2023 are set aside;

(b) The matter stands remitted back to the respondents to conduct the disciplinary proceedings against the petitioner from the stage of issuing Show Cause Notice/ Disagreement Note;

(c) The proceedings shall be concluded within a period of three months from the date of production of certified copy of the order subject to cooperation of the writ petitioner, strictly in accordance with statutes and ordinances, as applicable after providing adequate opportunity to the writ petitioner;

(d) The question of reinstatement and payment of consequential benefits shall be subject to final outcome of the disciplinary proceedings;

(e) In case, the disciplinary authority proposes to suspend the writ petitioner, then the writ petitioner shall be admissible to subsistence allowance, arrears and current as and when same falls due subject to compliance of the Rules.

15. Pursuant to the aforesaid directions of the order passed by this Court dated 29.11.2023, the petitioner was served with a show cause notice on 23.03.2024, wherein she was asked to submit reply within seven days. Reply to the said notice was given by the petitioner on 07.04.2024. Thereafter, the petitioner appeared in the meetings of the Board of Management on 13.05.2024 and 31.07.2024. Subsequently, a letter was received by the petitioner from one Advocate, namely, Mr. S.C. Tripathi

asking for her presence. Since the petitioner was not aware about the constitution of the external committee, she communicated with the University, whereupon she was provided the terms of reference and the order with respect to formation of new committee. The petitioner submitted her response to the 'terms of reference' and placed certain documents in support of her claim. She also submitted her reply on 07.10.2024. Thereafter, a copy of enquiry report dated 08.11.2024 was received by the petitioner along with letter dated 13.11.2024, whereby she was asked to submit a response within seven days. In response thereto, the petitioner submitted her reply on 20.11.2024.

16. Thereafter, the respondent authority - Registrar of the University passed the impugned order dated 14.12.202412, whereby petitioner's services have been terminated. Said order is being assailed by the petitioner by means of present writ petition.

17. I have heard Sri Nipun Singh, learned Advocate along with Sri Aishwarya Pratap Shahi, learned counsel for the petitioner, Sri Ashish Kumar Singh, learned Advocate along with Sri Ashutosh Mishra, learned counsel for the respondent University and Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel for the State.

18. Learned counsel for the petitioner submits that the petitioner has been performing her duties with utmost sincerity and devotion since the date of her initial appointment as Private Secretary. Having fulfilled the eligibility criteria for being promoted as Staff Officer to Vice Chancellor, she was promoted on 17.04.2018, however, with a malafide intent to harass the petitioner, on account of the complaint moved by her against the Officiating Registrar of the University, Sri S.N. Tiwari, on 06.08.2020, alleging misbehaviour and sexual harassment, the disciplinary proceedings were initiated against the petitioner.

19. Learned counsel for the petitioner further submits that in reference to the guidelines formulated by the Apex Court in the case of **Vishaka v. State of Rajasthan**, the University has constituted an Internal Complaint Committee (ICC), however, in a blatant disregard to the directions issued therein it has failed to conduct any inquiry. On the contrary, in retaliation, the petitioner has been targeted placing her under suspension on 18.08.2020, on the basis of a forged complaint.

20. It is argued by learned counsel for the petitioner that the alleged complaint dated 27.08.2020 has been disowned by Mr. Vishnu Pratap Singh (alleged complainant), who stated on oath that he had neither instructed any advocate to issue a notice nor he is aware of any such notice. Relying upon the said affidavit of alleged complaintant, the disciplinary action should have been nullified.

21. Stressing upon the ill-intent of Sri S.N. Tiwari, the then Registrar, learned counsel for the petitioner further contends that Sri S.N. Tiwari has himself proceeded to lodge a first information report against the petitioner, wherein the proceedings culminated in a closure report on 09.07.2021 and the petitioner was exonerated from the alleged criminal liability.

22. To show biased and premeditated mind of Sri S.N. Tiwari to anyhow harass

the petitioner, learned counsel for the petitioner next submits that Mr. Tiwari got a writ petition of quo-warranto14 filed before this Court through a practising Advocate of this Court Sri Pankaj Kumar Kesharwani, which is still pending.

23. Learned counsel for the petitioner contends that the petitioner's suspension and, later on, termination have been made on account of malafide intent of respondent authorities whose sole motive was to anyhow penalize the petitioner so as to wreck vengeance of filing complaint against the officiating Registrar, whereas the enquiry officer in the enquiry report dated 04.06.2021 himself observed that the petitioner was indeed pursuing her Ph.D as stated in the curriculum vitae submitted along with her application dated 07.07.2010 for the post of PS/Executive Assistant. At that time, she did not make any wrongful claim regarding she being a Ph.D candidate in order to emphasise her candidature as competent enough for the post of PS/ Executive Assistant to VC, GBU.

24. Laying emphasis on the challenge to the impugned termination order dated 14.12.2024, learned counsel for the petitioner summarized his submissions, inter alia, stating that said order has been passed in total disregard to the specific directions issued by this Court in the order dated 29.11.2023 passed in **Writ-A No. 13696 of 2023**, which are being reproduced herein below:

"35. Accordingly the writ petition is decided in the following manner:- (a) The order dated 27.06.2023 as well as the minutes of the Board of Management, Gautam Buddha University, Greater Noida, Gautam Budh Nagar dated 14.06.2023 are set aside; (b) ***The matter stands remitted back to the respondents to conduct the disciplinary proceedings against the petitioner from the stage of issuing Show Cause Notice/ Disagreement Note;*** *(c) The proceedings shall be concluded within a period of three months from the date of production of certified copy of the order subject to cooperation of the writ petitioner, strictly in accordance with statutes and ordinances, as applicable after providing adequate opportunity to the writ petitioner; (d) The question of reinstatement and payment of consequential benefit shall be subject to final outcome of the disciplinary proceedings; (e) In case, the disciplinary authority proposes to suspend the writ petitioner, then the writ petitioner shall be admissible to subsistence allowance, arrears and current as and when same falls due subject to compliance of the Rules."*

25. It is argued by learned counsel for the petitioner that the respondent authority has erroneously proceeded to constitute an external committee comprising of following members:

(i) Sri Lalloo Singh, District Sessions Judge (Retired)-Chairman;

(ii) Sri Anurag Ojha, Advocate-on-Record, Supreme Court of India; and

(iii) Dr. Chandrashekhar Paswan, Assistant Professor, Gautam Buddha University.

26. Controverting to the enquiry report dated 08.11.2024, learned counsel for the petitioner submits that the enquiry committee failed to appreciate the true facts and reply of the petitioner. He further submits that there is no dispute regarding eligibility of the petitioner for the post of Private Secretary as mentioned in

Paragraph No. 20 of the counter affidavit. The respondent University has also not disputed the educational qualification of the petitioner. He further contends that in view of the prescribed eligibility criteria, Ph.D. degree does not play any role for the appointment of a candidate as Private Secretary or promotion on the post of Staff Officer to the Vice Chancellor. No benefit was extended to the petitioner on the basis of Ph.D. degree.

27. It is also contended that petitioner's application for the post of Assistant Professor showing a fake Ph.D. degree does not adversely affect her minimum educational qualification, which she possesses for appointment and promotion on the post of Private Secretary and Staff Officer to Vice Chancellor, respectively. Insofar as the salutation 'Dr.', said to have been used by the petitioner, it did not extend any benefit in favour of the petitioner either at the time of her initial appointment as Private Secretary or thereafter promotion as Staff Officer.

28. Learned counsel for the petitioner further contended that the impugned order has been passed without application of mind and sans taking into consideration of the written objections filed by the petitioner. Neither any finding nor any reason has been recorded therein except treating the report of external committee dated 08.11.2024 as a gospel truth. The objections raised by the petitioner in her detailed reply, after issuance of disagreement note or even before passing the impugned termination order, have not been considered.

29. Regarding justification to ram an officer with the label of 'doubtful integrity', learned counsel for the petitioner has drawn the attention of the Court to the following observations of the Apex Court in the case of **M.S. Bindra v. Union of India15**:

"13. While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials, no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "nemo firut repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep their eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity", it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

30. In support of his submissions, with respect to judicial interference in disciplinary matters and consideration of quantum of punishment, learned counsel for the petitioner has drawn the attention of this Court to the relevant paragraphs of following judgements:

(i) B.C. Chaturvedi v. Union of India and others16:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(ii) Prem Nath Bali v. Registrar, High Court of Delhi and another17:

20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

31. Emphasising upon 'doctrine of proportionality', while considering punishment for the misconduct, learned counsel for the petitioner has relied upon the following judgements:

(i) Ranjit Thakur v. Union of India and others18:

"25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the

exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service 19 Lord Diplock said:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

(ii) Colour-Chem Ltd. v. A.L. Alaspurkar and others20:

"10. For resolving the controversy centering round this point it is necessary to have a look at the relevant statutory provisions of the Act. The Act was passed by the Maharashtra Legislature in 1971 as Act 1 of 1972. Amongst its diverse objects and reasons one of the reasons for enacting the said Act was for defining and providing for prevention of certain unfair labour practices, to constitute courts (as independent machinery) for carrying out the purposes mentioned therein one of which being enforcing provisions relating to unfair labour practices. "Unfair labour practices" is defined by Section 3 sub-section (16) of the Act to mean, "unfair labour practices as defined in Section 26". Section 26 of the Act lays down that, "unless the context requires otherwise, "unfair labour practices" mean any of the practices listed in Schedules II, III and IV". We are not concerned with Schedules II and III which deal with unfair labour practices on the part of the employer and trade unions. We are directly concerned with Schedule IV which deals with general unfair labour practices on the part of the employers. The relevant provisions of Item 1 of Schedule IV of the Act read as under:

"1. To discharge or dismiss employees-

(a) by way of victimisation;

*(b)-(f) * * **

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

So far as the aforesaid clause (g) is concerned the Labour Court has held that the misconduct alleged against the respondents and held proved before it was not misconduct of minor or technical character as they were found sleeping on duty and were also guilty of negligence in keeping the machine in working state without putting necessary raw material therein. As the aforesaid finding of the Labour Court about the nature of misconduct of Respondents 3 and 4 was confirmed by the revisional court and as that finding was not challenged by the respondents before the High Court we shall proceed for the present discussion on the basis that Respondents 3 and 4 were guilty of major misconduct. The moot question, therefore, which falls for consideration is whether on the express language of clause

(g) the said provision gets attracted or not. A conjoint reading of different sub-parts of the aforesaid provision, in our view, leaves no room for doubt that it deals with an unfair labour practice said to have been committed by an employer who discharges or dismisses an employee for misconduct of a minor or technical character and while doing so no regard is kept to the nature of the misconduct alleged and proved against the delinquent or without having regard to the past service record of the employee so that under these circumstances the ultimate punishment imposed on the delinquent would be found by the court to be a shockingly disproportionate punishment. It is not possible to agree with the contention of learned Senior Counsel for the respondent-workmen that the said clause would also cover even major misconduct if for such misconduct the orders of discharge or dismissal are passed by the employer without having regard to the nature of the particular misconduct or the past record of the employees and if under these circumstances it is found by the court that the punishment imposed is a shockingly disproportionate one. It is true that after the words "for misconduct of a minor or technical character" there is found a comma in clause (g), but if the contention of learned Senior Counsel is to be accepted the comma will have to be replaced by "or". That cannot be done in the context and settings of the said clause as the said exercise apart from being impermissible would not make a harmonious reading of the provision. Even that apart, in the said clause (g) the legislature has used the word "or" while dealing with the topic of non-consideration by the employer while imposing the punishment the relevant factors to be considered, namely, either the non-consideration of the nature of the particular misconduct or the past record of service of the employee, which would make the punishment appear to be shockingly disproportionate to the charge of misconduct held proved against the delinquent. Thus the term "or" as employed by the legislature in the said clause refers to the same topic, namely, non-consideration of relevant aspects by the employer while imposing the punishment. Consequently it cannot be said to have any reference to the nature of the misconduct, whether minor or major. It must, therefore, be held that the comma as found in the clause after providing for the nature of the misconduct only indicates how the same nature of the misconduct referred to in the first part of the clause results in a shockingly disproportionate punishment if certain relevant factors, as mentioned in the subsequent part of the clause, are not considered by the employer. If the contention of learned Senior Counsel for the respondents was right all the sub-parts of clause (g) have to be read disjunctively and not conjunctively. That would result in a very anomalous situation. In such an eventuality the discharge or dismissal of an employee in case of a major misconduct without regard to the nature of the particular misconduct or past record of service may by itself amount to shockingly disproportionate punishment. Consequently for a proved major misconduct, if past service record is not seen, the punishment of discharge or dismissal by itself may amount to a shockingly disproportionate punishment. Such an incongruous result is not contemplated by clause (g) of Item 1 of Schedule IV of the Act. Such type of truncated operation of the said provision is contra-indicated by the very texture and settings of the said clause. Once the said clause deals with the topic of misconduct of a minor or technical character it is difficult

to appreciate how the said clause can be construed as covering also major misconduct for which there is not even a whisper in the said clause. On a harmonious construction of the said clause with all its sub-parts, therefore, it must be held that the legislature had contemplated, while enacting the said clause, punishment of discharge or dismissal for misconduct of minor or technical character which, when seen in the light of the nature of the particular minor or technical misconduct or the past record of the employee, would amount to inflicting of a shockingly disproportionate punishment. In this connection we may mention that the same learned Judge B.N. Srikrishna, J., in a latter decision in the case of Pandurang Kashinath Wani v. Divisional Controller, Maharashtra SRTC21 has taken the view that clause (g) of Item 1 of Schedule IV of the Act refers to minor or technical misconduct only. The same view was also taken by another learned Judge Jahagirdar, J., in the case of Maharashtra SRTC v. Niranjan Sridhar Gade22. So far as this Court is concerned the same Act came up for consideration in the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate23. It is, of course, true that the question with which this Court was concerned was a different one, namely, whether before any final discharge or dismissal order is passed, a complaint could be filed under the Act on the ground that the employer was contemplating to commit such unfair labour practice, if ultimately the departmental proceedings were likely to result into final orders of dismissal or discharge attracting any of the clauses of Item 1 of Schedule IV of the Act. However, while considering the scheme of the Act especially the very same Item 1 of Schedule IV of the Act a Bench of this Court consisting of G.N. Ray, J. and one of us S.B. Majmudar, J. in para 26 of the Report assumed that the said clause would cover minor misconduct.

11. Learned Senior Counsel for the respondents was right when she contended that this being a labour welfare legislation liberal construction should be placed on the relevant provisions of the Act. She rightly invited our attention to para 41 of the Report of the aforesaid case in this connection. She also invited our attention to a decision of this Court in the case of Workmen v. Firestone Tyre and Rubber Co. of India (P) Ltd.24 especially the observations made in para 35 of the Report. It has been observed therein that if two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employee, has to be preferred. But it is further observed in the very said para that there is another canon of interpretation that a statute or for that matter even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. In our view, clause (g) of Item 1 of Schedule IV of the Act is not reasonably capable of two constructions. Only one reasonable construction is possible on the express language of clause (g), namely, that it seeks to cover only those types of unfair labour practices where minor misconduct or technical misconduct has resulted in dismissal or discharge of delinquent workmen and such punishment in the light of the nature of misconduct or past record of the delinquent is found to be shockingly disproportionate to the charges of minor misconduct or charges of technical misconduct held proved against the delinquent. The one and only subject-matter of clause (g) is the misconduct of minor or technical

character. The remaining parts of the clause do not indicate any separate subject-matter like the major misconduct. But they are all adjuncts and corollaries or appendages of the principal subject, namely, minor or technical misconduct which in a given set of cases may amount to resulting in a shockingly disproportionate punishment if they are followed by discharge or dismissal of the delinquent. The first point, therefore, will have to be answered in the negative in favour of the appellant and against the respondent-delinquents."

(iii) Sukhbir Singh v. The Deputy Commissioner of Police, New Delhi and others:

"10. If Rule 16.2 (1) of the Punjab Police Rules and Rule 8 read with Rule 10 of the Delhi Police Punishment and Appeal Rules, 1980 are compared it may be seen that there is no inconsistency between them. In fact, both the provisions state that the misconduct must be very 'grave' and continued, indicating incorrigibility and complete unfitness for Police service. It is thus seen that while awarding the sentence the Disciplinary Authority must apply its mind closely to the nature of the misconduct. It must be very grave. It cannot be said that the temporary mis-appropriation of a utensil from a mess is such a grave misconduct. But what is more important is that neither the Disciplinary Authority nor the Appellate Authority have applied their mind to the requirement of the statutory provisions before awarding the sentence of dismissal It was incumbent on the said Authorities to look to the past record of the petitioner and to find out whether there is any history of "continued misconduct." Neither the order of the Disciplinary Autority nor the order of the Appellate Authority disclose any past record of the Petitioner. The requirement of the statutory provision is that it must be shown that the delinquent is incorrigible. A history of past record showing the proceedings or warnings to the petitioner would have thrown light on this aspect of the misbehaviour but the orders are silent. So also the rules require that a delinquent must be found "to be complete unfit" for working in the Police force. This is in contra-distinction to the unfitness to work "in a particular rank". The Disciplinary Authority and the Appellate Authority have not looked at this aspect of misconduct also. Considering the nature of the misconduct and the statutory requirements I hold that the discretion has not been properly exercised by the Disciplinary Authority and the Appellate Authority and the punishment of dismissal is awarded in branch of the said statutory requirements. The punishment is too severe as compared to the misconduct. Recently in Civil Writ Petitions No. 1519 of 1979 and 1683 of 1979 I was called upon to decide whether in view of Rule 16.3 of the Punjab Police Rules a Departmental Proceeding held against two Police Officers after their aquittal by the Criminal Court was legal and valid. The two officers were found guilty of taking a young lady, who was stranger to the city, at night to quarters of another Officer in the Police lines for immoral purposes and for outraging her modesty. The punishment awarded to the said Officers was of foreiture of two years of approved service. This recent example which had come to my notice from the same department shows that for more grave misconduct more mild punishment of forfeiture of two years of service was awarded in the same department, namely, Delhi Police. This would also show that the punishment in the present case is too severe

and is not commensurate with the misconduct. I, therefore, hold that the petitioner is guilty of the misconduct but the punishment of dismissal is illegal. The punishment is, therefore, set aside. The Disciplinary Authority shall re-consider the matter of punishment in the light of Rule 16.2(1) of the Punjab Police Rules, Rules 8 and 10 of The Delhi Police Punishment and Appeal Rules, 1980 and shall pass a fresh order of punishment. The Petition partly succeeds. No order as to costs."

(iv) Shankar Dass v. Union of India and another26:

"7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

32. Learned counsel appearing for the respondent University submits that the petitioner produced a forged and fake degree before the University and misrepresented herself to be a Ph.D. Degree holder using the salutation 'Dr', prefixing it before her name. Such fraud vitiates everything, thus, the conduct of the petitioner is unwelcoming for an employee in a Higher Educational Institute. This act amounts to grave misconduct.

33. It is further contended that in the enquiry report dated 04.06.2021, out of four charges, three were found proved against the petitioner and only one charge remained unproven. Learned counsel for the University has also drawn attention of the Court to the application moved by the petitioner for the post of Assistant Professor, alleging herself to be a Ph.D. Degree holder. He argues that even at the time of her initial appointment, the petitioner has shown herself to be pursing 'Ph.D.' in her curriculum vitae, which proves that she misled the University and obtained the appointment by playing fraud.

34. Learned counsel for the respondents laying emphasis on the enquiry report submitted by the external committee, dated 08.11.2024, submits that order of termination dated 14.12.2024 has rightly been passed against the petitioner. He has relied upon a judgement of the Apex Court in the case of **Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar**, judgement of **Delhi High Court in the case Kiran Thakur v. Resident Commissioner, Bihar Bhawan**, and a judgement of this Court in the case of

Distt. Basic Education Officer and another v. Smt. Punita Singh and 3 others. He has emphasized upon paragraph-22 of the judgement in **Indian Oil Corporation Limited (supra)**, which is being reproduced herein below:

"22. In the present case, the original writ petitioner was dismissed from service by the disciplinary authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a trust. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the disciplinary authority was justified in imposing the punishment of dismissal from service."

35. Learned counsel for the University has strenuously argued that the petitioner has committed grave misconduct as she consciously and intentionally used salutation 'Dr.' and submitted a fabricated degree of Ph.D., thus, in view of the settled position of law, she is not entitled for any relief.

36. I have considered the submissions advanced by learned counsel for the parties and perused the record.

37. The order impugned dated 14.12.2024 has been passed on the basis of disciplinary proceedings initiated against the petitioner for the submission of forged Ph.D. Degree and using salutation 'Dr.' prefixing it before her name. The enquiry committee, in its report, found the said accusations levelled against petitioner to be proved.

38. Record reveals that since the date of suspension of the petitioner dated 18.08.2020, three rounds of proceedings have been conducted, which ultimately culminated in the impugned order dated 14.12.2024. This is the Fourth Termination order passed against the petitioner and the present writ petition is the fourth one filed by her.

39. Perusal of the notices issued to the petitioner, replies submitted thereto and the enquiry reports, show that admittedly the petitioner used salutation 'Dr.' before her name without being in legitimate possession of a Ph.D. Degree. However, the allegation of submitting fake degree of Ph.D., is denied by the petitioner, stating that she never submitted any such degree in the office of the University, though, it may have been placed by someone in her service records, to which the custodian is Registrar of the University, against whom the petitioner had moved a complaint of sexual harassment on 06.08.2020, just prior to passing of suspension order dated 18.08.2020. The clarification submitted by the petitioner, which has been quoted in Sl. No. 7.11 of the enquiry report dated 04.06.2021 reads thus:

7.11 ...

I have never submitted a PhD degree at the post that I have been serving on, and neither have I ever claimed to be a PhD holder. In addition to this, as far as my knowledge goes, an employee's documents are not in their annual performance report files (this may be verified with establishment cell) hence how

the document was found in that file is beyond my scope of understanding. I would also like to bring to your kind notice that my personal files had been in the possession of Mr. S.N Tiwari for several months before my suspension, this may also be verified with the establishment cell. I had informed the honourable Vice Chancellor about the same several times verbally and in writing.

The maximum educational qualification required for my post as PS to VC was graduation degree."

40. Indisputably, the petitioner has used the salutation 'Dr' before her name. The University finds it a serious misconduct and loss of integrity. However, the enquiry officer in its enquiry report dated 04.06.2021 in the Conclusion No. 7.17 has mentioned that it is clear from the evidence that the petitioner was indeed pursuing her Ph.D. as stated in the curriculum vitae, she had submitted along with her application dated 07.07.2010 for the post of PS/Executive Assistant. At that time, she did not make any wrongful claims regarding she being a Ph.D. candidate in order to emphasise her candidature as competent enough for the post of PS/ Executive Assistant in GBU. The conclusion 7.17 is being quoted herein below:

"7.17 ***Conclusion:*** *In view of the above, it is evident that CO submitted the fake PhD degree and misled her employer through various acts to establish that she is a Ph.D degree holder. Hence, her integrity is doubtful which is in violation of Sub para 3(i) of Para 16 pertaining to employees conduct Rules of the Ordinances of GBU. However, it is clear from the evidence that she was indeed pursuing her Ph.D as stated in the curriculum vitae she had submitted along with her application dated 07.07.2010 for the post of PS/Executive Assistant. At that time, she did not make any wrongful claims regarding she being a Ph.D candidate in order to emphasise her candidature as competent enough for the post of PS/ Executive Assistant of GBU."*

41. In the conclusion recorded by the enquiry officer at Sl. No. 8.4, it has been observed that it is very difficult to establish that petitioner's damnable attempt to show herself as Ph.D. degree holder had a significant role in her promotion as Staff Officer to the Vice Chancellor. The conclusion 8.4 is being quoted herein below:

"8.4 ***Conclusion:*** *In view of the above, it is evident that CO sought to mislead her employer by various means to establish that she was a Ph.D degree holder. Thus, concealment of the material fact she used a fake Ph.D degree while applying for the Assistant Professor post, is in violation of Sub Para 3 (I) of Para 16 pertaining to Employees Conduct Rules of the Ordinances of GBU. However, it is very difficult to establish that her damnable attempt to show herself a Ph.D degree holder had a significant role in her promotion as Staff Officer to the Vice Chancellor."*

42. While recording Conclusion No. 9.2 the enquiry officer in the report dated 04.06.2021 has stated that it is very difficult to establish that her false attempt to show herself a Ph.D. degree holder had a significant role in her promotion as Staff Officer to the Vice Chancellor. The conclusion 9.2 is being quoted herein below:

*"****9.2 Conclusion:*** *In view of the above, it is evident that CO sought to*

mislead her employer by various means including the usage of fake educational document while applying for the Assistant professor post, to establish that she was a Ph.D degree holder. Thus the action of the CO, is in violation of Sub Para 3 (I) of Para 16 pertaining to Employees Conduct Rules of the Ordinances of GBU. However, it is very difficult to establish that her false attempt to show herself a Ph.D holder had a significant role in her promotion as Staff Officer to the Vice Chancellor."

43. To the arguments advanced by learned counsel for the respondent University that fraus omnia vitiat (fraud vitiates everything), learned counsel for the petitioner has drawn attention of the Court to the observations made by the enquiry officer in its report dated 04.06.2021, quoted in the preceding paragraphs, that it has been specifically averred by the enquiry officer that 'it is clear from the evidence that the petitioner was indeed pursuing her Ph.D as stated in the curriculum vitae, she had submitted along with her application dated 07.07.2010 for the post of PS/Executive Assistant. At that time, she did not make any wrongful claim regarding being a Ph.D. candidate, in order to emphasise her candidature as more competent for the post of PS/ Executive Assistant in GBU'.

44. Learned counsel for the petitioner further contended that with respect to the 'term of reference' that 'employee can be said to have not derived any benefit of Ph.D. degree whatsoever', it has been observed in Paragraph-8 of the enquiry report dated 08.11.2024 that in absence of any material which indicates that mere appendage of salutation 'Dr.' had any bearing on her regularization or promotion of employee as considered by three member panel, it is difficult to assume that any benefit in material terms have flown to her directly.

45. In retaliation to above arguments, learned counsel for the University contended that the petitioner had produced forged and fake Ph.D. degree before the University and also misrepresented herself as belonging to doctorate category by prefixing 'Dr.' before her name, thus, she played fraud on the University, for which she is liable to be punished with major punishment of dismissal from service.

46. This Court finds that before arriving at any conclusion, definitions of 'misconduct' and 'fraud' are required to be considered.

47. 'Misconduct' has been defined in P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821, as under:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of

discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. 'Misconduct in office' may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

(Emphasis supplied)

48. In KERR on the Law of Fraud and Mistake, 'Fraud' has been defined thus:

"It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety...Courts have always declined to define it, ...reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud...may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too."

(Emphasis supplied)

49. The Supreme Court in the case of **General Manager, Appellate Authority, Bank of India and another v. Mohd. Nizamuddin**, has held that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. Relevant paragraph of the said judgement reads thus:

"9. It is now well-settled principle of law that the gravity of misconduct must necessarily be measured in terms of the nature of the misconduct. A bank officer holding the post of Middle Management Officer, Grade II which is a responsible post absented himself unauthorisedly for about three years which is undoubtedly detrimental to the public interest cannot be said to be not grave misconduct which would warrant dismissal from service. The High Court's view that the punishment of dismissal from service on the proved misconduct is disproportionate to the gravity of the misconduct, in our view, is fallacious. There can never be a more grave misconduct than a bank officer holding a responsible post absenting himself unauthorisedly for a period of three years detrimental to the public interest. That apart, despite the receipt of several notices issued to him he remained adamant and shied away from participating in the inquiry proceedings. This conduct is also unbecoming of a responsible officer holding the position as Middle Management Officer, Grade II."

(Emphasis supplied)

50. In the case of **Ravi Yashwant Bhoir v. Collector**31, the Apex Court has observed that the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into

consideration the scope and object of the statute which is being construed. Misconduct must be measured in the terms of the its nature and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.

"19. Further, the expression 'misconduct' has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

51. The Apex Court in **Ravi Yashwant Bhoir (supra)** has elaborated the expression disgraceful conduct. Paragraph-20 of the said judgement reads thus:

"20. The expression "disgraceful conduct" is not defined in the statute. Therefore, the same has to be understood in given dictionary meaning. The term "disgrace" signifies loss of honour, respect, or reputation, shame or bring disfavour or discredit. "Disgraceful" means giving offence to moral sensibilities and injurious to reputation or conduct or character deserving or bringing disgrace or shame. Disgraceful conduct is also to be examined from the context in which the term has been employed under the statute. Disgraceful conduct need not necessarily be connected with the official (sic duties) of the office-bearer. Therefore, it may be outside the ambit of discharge of his official duty."

52. It is a clear case of unnecessary harassment of the petitioner, as all proceedings against her were initiated only after she lodged a complaint against the Registrar. Significantly, the proceedings were founded upon a complaint allegedly made by a person who, in fact, had not filed it. This sequence of events unmistakably reflects the conduct of the Registrar, who continued in service with the University, whereas the petitioner has been removed from employment.

53. The petitioner has merely stated that she is pursuing Ph.D.. At no stage has she either produced any document or made a categorical claim that she had completed Ph.D. course. The alleged fact was specifically denied before the enquiry officer as well. Despite this, the petitioner has been held guilty of misconduct. Such a finding cannot be sustained in the eyes of law. A mere assertion of pursuing higher studies does not amount to a false claim of possessing the said qualification. Unless there is a clear, deliberate, and conscious misrepresentation with intent to secure an undue advantage, the same cannot constitute misconduct.

54. The Supreme Court in the case of **Union of India and others v. J. Ahmed**, observed that misconduct must involve a wrongful act or a willful omission which is blameworthy and not merely an error of judgment or inadvertence. Similarly, in **State of Punjab and others v. Ram Singh Ex-Constable**, the Court clarified that misconduct implies a transgression of established rules or standards of behavior, not an innocuous or ambiguous statement.

55. From the record, it unmistakably emerges that the entire chain of proceedings was set in motion only after

the petitioner lodged a complaint dated 06.08.2020 against Mr. S.N. Tiwari, the then officiating Registrar, concerning an alleged legal notice purportedly issued by Shri Vishnu Prasad Singh. This Court has further noticed that an endorsement was made on the said notice directing the Registrar to ascertain the facts and report confidentially, which stands categorically denied by the alleged complainant himself. These circumstances leave no room for doubt that the university authorities, and in particular the Registrar, acted with a clear design to target and harass the petitioner, thereby demonstrating a pre-determined and vindictive approach rather than a fair or lawful exercise of authority.

56. This Court further observes that in her statement before the Enquiry Committee, the petitioner categorically denied having submitted any Ph.D. certificate at any stage or at any point of time. She also specifically stated that the custodian of the relevant records was Mr. S.N. Tiwari, the then officiating Registrar, against whom she had already lodged a complaint. The facts on record thus establish that Mr. Tiwari was inimically disposed towards the petitioner from the very inception. It is therefore manifest that the entire proceedings were initiated, pursued and sustained at the instance of Mr. Tiwari, reflecting not only bias but also a mala fide and vindictive exercise of power on the part of the University authorities.

57. The law is well settled that any administrative or disciplinary proceeding tainted by mala fides or actuated by bias cannot be sustained in the eyes of law. The Supreme Court in the case of **State of Punjab v. V.K. Khanna and others** has held that proceedings initiated with a predetermined mind or mala fide intent stand vitiated. Likewise, in the case of **Kumari Shrilekha Vidyarthi and others v. State of U.P. and others** the Apex Court observed that arbitrariness or malice in law, even in administrative actions, strikes at the root of legality. Further, in the case of **Ramesh Chander Singh v. High Court of Allahabad and another**, it was categorically held that bias and malice in law render the entire proceedings void ab initio.

58. In some of the cases, the courts have struck down disciplinary action where the proceedings were found to have been initiated on account of personal bias and malafide intent with the observation that when an authority acts with an intent of animosity against an employee, such action cannot be sustained in law.

59. Applying these settled principles to the present case, it is evident that the proceedings against the petitioner were not guided by lawful consideration but were the direct outcome of personal enmity and vindictiveness, thereby rendering the same wholly unsustainable in law.

60. This Court finds that there is no material available on record, nor has any finding been returned, to establish that possession of a Ph.D. degree was ever prescribed as an essential qualification for appointment to the post of Private Secretary to the Vice-Chancellor or for promotion to the post of Staff Officer. It further emerges that no guidelines or administrative instructions were in existence to suggest that a candidate holding a higher academic degree would be entitled to any preference or advantage in the matter of appointment or promotion.

61. In these circumstances, there was neither occasion nor necessity for the petitioner to submit or rely upon a Ph.D. degree. The allegation that the petitioner attempted to secure any undue advantage by producing a Ph.D. certificate is wholly misconceived and unfounded, particularly when the petitioner has categorically and consistently denied having submitted the same at any stage.

62. This Court is constrained to observe that the initiation of proceedings against the petitioner on such untenable grounds reflects a clear abuse of process and smacks of mala fides. The manner in which the petitioner has been proceeded against, despite the absence of any legal or factual basis, indicates that the action was not guided by bona fide considerations but was motivated by extraneous reasons with the sole object of victimising the petitioner. Such conduct, in the considered opinion of this Court, amounts to an arbitrary exercise of power and cannot be countenanced in law.

63. It is evident from the record that no material has been produced to demonstrate that the petitioner ever derived or was conferred any advantage by mentioning in her application, at the time of her selection as Private Secretary to the Vice-Chancellor, that she was pursuing Ph.D. The authorities have proceeded merely on surmises and conjectures, and that too after the petitioner had rendered several years of unblemished and satisfactory service. It is settled law, as laid down in the case of **Union of India v. H.C. Goel37, Roop Singh Negi v. Punjab National Bank and others**, and other judgments of the Supreme Court, that disciplinary action based on no evidence or mere suspicion cannot be sustained. The impugned action, therefore, is wholly unsustainable in law.

64. The bias of the authorities is evident from the fact that they have relied solely upon the allegations made by Mr. S.N. Tiwari, the officiating Registrar, against whom the petitioner had already lodged a complaint. Despite this, the authorities proceeded to conduct an enquiry in complete disregard to the order dated 29.11.2023 passed by this Court passed in **Writ-A No. 13696 of 2023 (Smt. Meena Singh v. State of U.P. and 3 Others)**. This Court had issued no direction for holding a fresh enquiry. Nevertheless, the authorities, in disregard of the Court's order, constituted a three-member external committee to conduct an enquiry, which clearly reflects the mala fide intention of the authorities concerned.

65. Prior to the so-called complaint allegedly moved by one Vishnu Pratap Singh, which has in fact been denied by the complainant himself, there had never been any grievance or allegation at any point of time regarding the work or conduct of the petitioner. On the contrary, her service was consistently found satisfactory and her integrity was duly certified. The entire course of events took an adverse turn only after the petitioner lodged a complaint against the Registrar, followed by repeated enquiries, the last of which was conducted in a manner contrary to the directions issued by this Court.

66. This Court expresses its displeasure that despite three rounds of litigation and the matter having been remitted, the concerned authorities, in utter disregard of this Court's directions, proceeded to conduct a fresh enquiry with the sole object of punishing the petitioner without any justifiable cause.

67. Even if it is assumed that the petitioner had mentioned in her application that she was pursuing a Ph.D. and had prefixed 'Dr.' to her name, the same by itself cannot be construed as misconduct, particularly when these aspects have neither been examined nor established in the course of the enquiry.

68. Having considered the arguments advanced by learned counsel for the parties and perusal of record, this Court finds that a case is made out in favour of the petitioner. The order impugned dated 14.12.2024 passed by the Registrar, Gautam Buddha University, Greater Noida, Gautam Budh Nagar is quashed. The respondent University - Registrar, Gautam Buddha University, Greater Noida, Gautam Budh Nagar is directed to allow the petitioner to function as Staff Officer to Vice Chancellor.

69. With the aforesaid directions, writ petition stands allowed.

70. There shall be no order as to costs.

(2025) 9 ILRA 747
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.09.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ A No. 4470 of 2023

Shiv Bachan Gautam ...Petitioner
Versus
State Public Services Tribunal, Lucknow & Ors. ...Respondents

Counsel for the Petitioner:
Om Prakash Misra

Counsel for the Respondents:
Shikhar Anand, C.S.C.

Issue for consideration

How is the decision regarding pay and allowances (from the date of dismissal till his reinstatement) of a government servant made in case the order of his dismissal from service is set aside?

Headnotes

A. Service Law - Financial Hand Book Volume-II (Part II to IV): Fundamental Rule 54-A(3) - In cases where the order of dismissal from service of a government servant is set aside by any court, the decision in respect of pay and allowances to the said government servant from the date of his dismissal till the date of his reinstatement is taken as per the provisions made in the Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV). (Para 19)

Fundamental Rule 54-A(2)(i) provides that in case of setting aside of the order of dismissal from service of a government servant on procedural grounds, he shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, as the competent authority may determine after giving notice. (Para 20, 22)

The Superintendent of Police (Railways), Prayagraj passed the punishment order on 07.12.2007 whereby, the petitioner was dismissed from service. Order was upheld by appellate and revisional authorities. The petitioner challenged the punishment order dated 07.12.2007, the appellate order dated 18.08.2012 and the revisional order dated 25.08.2013 by filing Claim Petition No.555/2014 and the learned Tribunal had allowed the said claim petition and had set aside the punishment order dated 07.12.2007 by which the petitioner was dismissed from service. The learned Tribunal in its judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 had recorded a finding that the punishment of dismissal from service is

shockingly disproportionate to the alleged misconduct and therefore, is unsustainable in the eyes of law. Learned Tribunal further granted liberty to the disciplinary authority to impose any lesser punishment on the petitioner. (Para 16, 17)

After passing of the judgment and order dated 27.10.2016 by the learned Tribunal in Claim Petition No.555/2014, the respondents instituted a preliminary enquiry but did not impose any punishment against the petitioner in terms of the liberty granted by the learned Tribunal and the petitioner was reinstated in service on 07.03.2017. In respect of pay and allowances for the period from 11.12.2007 to 07.03.2017, the disciplinary authority issued a show cause notice on 04.11.2018, whereby the petitioner was required to show cause as to why he may not be denied pay and allowances of his post for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The petitioner filed his reply and thereafter the competent authority passed an order on 13.12.2018 whereby, the petitioner has been denied the pay and allowances for the period from 11.12.2007 to 07.03.2017. (Para 18)

Fundamental Rule 54-A(3) provides that if the order of dismissal from service of a government servant had been set aside by the court on merits of the case, he shall be entitled for full pay and allowances for the period starting from the date of dismissal from service till his reinstatement. (Para 23)

B. The Tribunal has failed to appreciate the matter in correct perspective. Learned Tribunal in the impugned judgment and order dated 22.03.2023 has recorded a finding that the Tribunal vide its earlier order dated 27.10.2016 passed in Claim Petition No.555/2014 had set aside the order of dismissal from service on the ground that the punishment imposed against the petitioner was disproportionate to his alleged misconduct, therefore, **the setting aside of the punishment order is neither on merits of the case nor on procedural grounds, as such, the petitioner would not be entitled for any benefit of pay and allowances either admissible under Fundamental Rule 54- A(2)(i) or 54-A(3) of the Financial Hand Book.** (Para 24)

Assuming for a moment that Fundamental Rule 54-A(2)(i) and (3) were not applicable and there was no provision which was applicable to the peculiarity of the situation, the Tribunal had to step in and decide the case as per principles of equity, good conscience and justice. Some decision had to be taken regarding regularization of period from the date of dismissal till reinstatement, as also, the pay and allowances payable for the said period. Guidance could be taken in this regard from the provisions and principles contained in Fundamental Rule 54-A. (Para 25, 26)

There is no doubt that the petitioner could not have been totally denied pay and allowances for the relevant period on the principle of 'No Work No Pay' as, the petitioner was kept out of service on account of punishment of dismissal which was illegal and excessive and was ultimately set aside. (Para 27)

The petitioner in all fairness submitted that only 50% of the admissible pay and allowances for the period from 11.12.2007 to 07.03.2017 may be paid to the petitioner. A fair and reasonable amount is to be paid to the petitioner subject to the petitioner furnishing a certificate by him stating therein that he was not gainfully employed at any place from the date of dismissal till his reinstatement. (Para 28, 29)

Writ petition allowed. (E-4)

List of Acts

Financial Hand Book Volume-II (Part II to IV).

List of Keywords

Service, disciplinary proceedings, punishment, dismissal, reinstatement.

Appearances for Parties

For Petitioner: Om Prakash Misra
For Respondent: Shikhar Anand, C.S.C

(Delivered by Hon'ble Manjive Shukla, J.)

1. Heard Shri Om Prakash Misra, learned counsel for the petitioner and Shri Kumar Sambhav, learned Standing Counsel appearing for the respondent nos.2 to 5.

2. The captioned writ petition has been filed assailing therein, the judgment and order dated 22.03.2023 passed by the learned State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No.1332/2020 (Shiv Bachan Gautam vs. State of U.P. and others) whereby, the claim petition had been dismissed.

3. The facts of the case, in brief, are that initially disciplinary proceedings were conducted against the petitioner and a punishment order was passed on 27.02.2004 whereby, punishment in the form of reversion at the basic pay for one year was imposed against him. The petitioner preferred an appeal against the order dated 27.02.2004 which was dismissed on 02.08.2004, and thereafter, a revision was filed which was allowed vide order dated 04.03.2005 with direction to the Superintendent of Police, Agra to prepare a fresh charge-sheet against the petitioner and conduct fresh enquiry in the matter. Thereafter, again disciplinary proceedings were conducted against the petitioner and the Superintendent of Police (Railways), Prayagraj passed the punishment order dated 07.12.2007 whereby, the petitioner was dismissed from service. Again, the petitioner preferred an appeal which was dismissed vide order dated 18.08.2012, and thereafter, the revision filed by the petitioner was also dismissed vide order dated 25.08.2013.

4. The petitioner in the aforesaid circumstances challenged the punishment order dated 07.12.2007, the appellate order dated 18.08.2012 and the revisional order dated 25.08.2013 by filing Claim Petition No.555/2014 before the learned State Public Services Tribunal, Indira Bhawan, Lucknow. The learned Tribunal after considering the entire material in detail, allowed the Claim Petition No.555/2014 vide judgment and order dated 27.10.2016 and set aside the order of punishment of dismissal from service along with the appellate order and the revisional order with a liberty to the respondents to impose appropriate punishment against the petitioner. The learned Tribunal in its judgment and order dated 27.10.2016 had recorded a categorical finding that the punishment of dismissal from service was shockingly disproportionate to the alleged misconduct and found that the disciplinary authority had awarded excessive punishment of dismissal to the petitioner.

5. The judgment and order dated 27.10.2016 passed by the learned Tribunal in Claim Petition No.555/2014 was complied with by the respondents and the petitioner was reinstated in service on 07.03.2017. Thereafter, the respondents instituted a preliminary enquiry and proceeded to take decision in respect of the matter of payment of salary to the petitioner for the period from 11.12.2007 to 07.03.2017, as per the applicable rules. It is noteworthy that after setting aside of the order of dismissal from service by the learned Tribunal, the respondents have not imposed any punishment against the petitioner.

6. The Superintendent of Police (Railways), Prayagraj issued a show cause notice on 04.11.2018 to the petitioner whereby he was required to file his reply on the issue as to why he may not be denied salary for the period from 11.12.2007 to 07.03.2017 on the principle

of 'No Work No Pay'. The petitioner submitted his reply on 30.11.2018. The Superintendent of Police concerned had passed an order on 13.12.2018 whereby, he has denied salary to the petitioner for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The Superintendent of Police in his order dated 13.12.2018 had recorded a finding that the petitioner was dismissed from service vide order dated 07.12.2007 and the said punishment order had been set aside by the learned Tribunal only on the ground of proportionality of the punishment and not on the merit of the charges levelled against him therefore, since the petitioner admittedly had not worked for the period from 11.12.2007 to 07.03.2017, he is not entitled for salary of the said period on the principle of 'No Work No Pay'. The petitioner filed an appeal against the order dated 13.12.2018 which had been dismissed vide order dated 06.11.2019 and thereafter, he filed a revision which had also been dismissed vide order dated 07.09.2020.

7. The petitioner in the aforesaid circumstances filed the Claim Petition No.1332 of 2020 (Shiv Bachan Gautam vs. State of U.P. and others) before the learned Tribunal challenging therein, the order dated 13.12.2018, the appellate order dated 06.11.2019 and the revisional order dated 07.09.2020. The petitioner in his claim petition took the ground that the Fundamental Rule 54-A(3) of the Financial Hand Book Volume-II (Part II to IV) provides that if the dismissal order of a government servant is set aside by the court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as duty for all purposes and the government servant shall be paid the full pay and allowances for the said period. Learned Tribunal considered the grounds raised in the claim petition and has dismissed the claim petition vide judgment and order dated 22.03.2023.

8. It has been submitted on behalf of the petitioner that the order dated 07.12.2007 whereby, he was dismissed from service had been set aside by the learned Tribunal vide judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 on the ground that on the basis of the alleged misconduct, the petitioner could not have been dismissed from service and the punishment of dismissal from service is shockingly disproportionate, therefore, it is apparent that the learned Tribunal had interfered with the punishment of dismissal from service on merits of the punishment. It has further been submitted that the learned Tribunal vide its judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 had granted liberty to the respondents to impose any proportionate punishment against the petitioner but the respondents have not imposed any punishment, as such it is apparent that there was no material available against the petitioner on the basis of which any punishment could have been imposed.

9. Shri Om Prakash Misra, learned counsel appearing for the petitioner has argued that where the order of dismissal from service is set aside by the court, the decision in respect of the pay and allowances for the period from the date of dismissal from service till the date of reinstatement of the government servant is to be taken under Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV) and Fundamental Rule 54-A(2)(i) provides that in the case the order

of dismissal is set aside by the court not on merits but on procedural grounds, the government servant will be paid such amount (not being the whole) of the pay and allowances which he would have been entitled, had he not been dismissed from service, as the competent authority may determine after giving notice to the government servant and further Fundamental Rule 54-A (3) provides that if the dismissal order of a government servant is set aside by the court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed from service. It has further been argued that the petitioner's order of dismissal from service had been set aside by the learned Tribunal on the ground that the punishment of dismissal from service was shockingly disproportionate to the alleged misconduct and therefore, setting aside of the order of dismissal from service is on merits, more particularly when the respondents themselves have not imposed any punishment against the petitioner, therefore, the case of the petitioner is to be dealt with under Fundamental Rule 54-A(3) of the Financial Hand Book Volume-II (Part II to IV) and he is entitled for full pay and allowances for the period from the date of order of dismissal from service till the date of his reinstatement in service.

10. Shri Om Prakash Misra, learned counsel appearing for the petitioner has also argued that the learned Tribunal, in the impugned judgment and order dated 22.03.2023, had recorded a finding that the setting aside of the order of dismissal from service is neither on merits nor on procedural grounds, therefore, the petitioner's case is not covered either under Fundamental Rule 54-A(2)(i) or under Fundamental Rule 54-A (3) of the Financial Hand Book Volume-II (Part II to IV) whereas, the said finding on its face is erroneous as it is apparent that the learned Tribunal found that on merits of the case the punishment of dismissal imposed against the petitioner was shockingly disproportionate and thereby set aside the punishment order, therefore, in view of the provisions made in Fundamental Rule 54-A(3) the petitioner is entitled for full pay and allowances for the period from the date of order of dismissal from service till the date of his reinstatement in service.

11. Shri Om Prakash Misra, learned counsel appearing for the petitioner, however, has submitted that if the petitioner is paid 50% of the pay and allowances admissible to him for the period from 11.12.2007 to 07.03.2017, the petitioner would gracefully accept it.

12. Shri Kumar Sambhav, learned Standing Counsel appearing for the respondents has argued that the order by which the petitioner was dismissed from service had not been set aside by the learned Tribunal on merits; rather it found the punishment of dismissal from service disproportionate to the alleged misconduct, and therefore, the petitioner's case does not fall in the ambit of Fundamental Rule 54-A (3) of the Financial Hand Book Volume-II (Part II to IV).

13. It has further been argued that since Fundamental Rule 54-A(2)(i) of the Financial Hand Book provides that in the cases where punishment order is set aside by the court on procedural ground, the government servant shall be paid the pay and allowances (not being the whole) for

the period from the date of order of dismissal from service till the date of reinstatement, as determined by the competent authority but since in the case of the petitioner the order of dismissal from service had not been set aside on procedural ground, therefore, he is also not entitled to get the benefit of the provisions made in Fundamental Rule 54-A (2)(i).

14. Shri Kumar Sambhav, learned Standing Counsel appearing for the respondents has also argued that a show cause notice was issued to the petitioner whereby he was required to file his reply on the point as to why he may not be denied the pay and allowances for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay' and thereafter the competent authority, after considering the reply of the petitioner, had passed the order dated 13.12.2018 wherein it had been stated that admittedly the petitioner has not worked for the period from 11.12.2007 to 07.03.2017 therefore, he is not entitled for the pay and allowance for the said period on the principle of 'No Work No Pay'. It has thus been argued that there is neither any illegality nor infirmity in the judgment and order dated 22.03.2023 passed by the learned Tribunal in Claim Petition No.1332/2020 therefore, the writ petition filed by the petitioner is liable to be dismissed by this Court.

15. We have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the documents available in the record of the writ petition.

16. We find that the disciplinary proceedings against the petitioner were initiated and the disciplinary authority passed an order on 27.02.2024 whereby, the punishment in the form of reversion to the basic pay for one year was imposed upon him. Later on, the said punishment order was set aside by the revisional authority vide his order dated 04.03.2005 and direction was issued to the Superintendent of Police to issue fresh charge-sheet, and conduct fresh disciplinary enquiry and pass a punishment order. The Superintendent of Police (Railways), Prayagraj passed the punishment order on 07.12.2007 whereby, the petitioner was dismissed from service. The petitioner preferred a statutory appeal against the punishment dated 07.12.2007 which was dismissed on 18.08.2012, and thereafter revision was filed, that too was dismissed vide order dated 25.08.2013.

17. The petitioner challenged the punishment order dated 07.12.2007, the appellate order dated 18.08.2012 and the revisional order dated 25.08.2013 by filing Claim Petition No.555/2014 and the learned Tribunal had allowed the said claim petition and had set aside the punishment order dated 07.12.2007 by which the petitioner was dismissed from service. The learned Tribunal in its judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 had recorded a finding that the punishment of dismissal from service is shockingly disproportionate to the alleged misconduct and therefore, is unsustainable in the eyes of law. Learned Tribunal further granted liberty to the disciplinary authority to impose any lesser punishment on the petitioner.

18. We further find that after passing of the judgment and order dated 27.10.2016 by the learned Tribunal in Claim Petition No.555/2014, the respondents instituted a preliminary enquiry but did not impose any punishment against the petitioner in terms

of the liberty granted by the learned Tribunal and the petitioner was reinstated in service on 07.03.2017. In respect of pay and allowances for the period from 11.12.2007 to 07.03.2017, the disciplinary authority issued a show cause notice on 04.11.2018, whereby the petitioner was required to show cause as to why he may not be denied pay and allowances of his post for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The petitioner filed his reply and thereafter the competent authority passed an order on 13.12.2018 whereby, the petitioner has been denied the pay and allowances for the period from 11.12.2007 to 07.03.2017.

19. It is noteworthy that in the cases where the order of dismissal from service of a government servant is set aside by any court, the decision in respect of pay and allowances to the said government servant from the date of his dismissal till the date of his reinstatement is taken as per the provisions made in the Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV). For ready reference the Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV) is extracted as under:-

"54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he

would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE-*Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after the dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge."*

20. Fundamental Rule 54-A(2)(i) of the Financial Hand Book Volume-II (Part II to IV) provides that in case of setting aside of the order of dismissal from service of a government servant on procedural grounds, he shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, as the competent authority may determine after giving notice.

21. The provisions of Fundamental Rule 54-A(2)(i) of the Financial Hand Book Volume-II (Part II to IV) are subject to the provisions of Fundamental Rule 54 (7) which reads as under:-

"54 (7). The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowance admissible under Rule 53."

22. Thus, from the provisions made in Fundamental Rule 54-A(2)(i) of the Financial Hand Book, it is apparent that if the order of dismissal from service of a government servant had been set aside by the court on procedural grounds and thereafter he is reinstated in service, the government servant concerned shall be paid pay and allowances for the period from the date of dimissal from service till the reinstatement, which would not be less than the subsistance allowance admissible to him, if he would have been placed under suspension, meaning thereby it can be more than the subsistence allowance admissible to him, what exactly should be the amount is to be determined by the competent authority taking into consideration relevant facts and circumstances.

23. Fundamental Rule 54-A(3) of the Financial Hand Book on the other hand provides that if the order of dismissal from service of a government servant had been set aside by the court on merits of the case, he shall be entitled for full pay and allowances for the period starting from the date of dismissal from service till his reinstatement.

24. Learned Tribunal in the impugned judgment and order dated 22.03.2023 has recorded a finding that the Tribunal vide its earlier order dated 27.10.2016 passed in Claim Petition No.555/2014 had set aside the order of dismissal from service on the ground that the punishment imposed against the petitioner was disproportionate to his alleged misconduct, therefore, the

setting aside of the punishment order is neither on merits of the case nor on procedural grounds, as such, the petitioner would not be entitled for any benefit of pay and allowances either admissible under Fundamental Rule 54-A(2)(i) or 54-A(3) of the Financial Hand Book.

25. Assuming for a moment that Fundamental Rule 54-A(2)(i) and (3) were not applicable and there was no provision which was applicable to the peculiarity of the situation, the Tribunal had to step in and decide the case as per principles of equity, good conscience and justice. After all some decision had to be taken regarding regularization of period from the date of dismissal till reinstatement, as also, the pay and allowances payable for the said period. Guidance could be taken in this regard from the provisions and principles contained in Fundamental Rule 54-A.

26. Once the Tribunal vide judgment dated 27.10.2016 held that the punishment of dismissal was shockingly disproportionate and accordingly set aside the dismissal order dated 07.12.2007 albeit with liberty to impose a lesser punishment but, no punishment, what to say, a lesser punishment was imposed even after conducting a preliminary enquiry post the order dated 27.10.2016, the setting aside of the dismissal order was certainly not on procedural grounds, it was on the ground of quantum of punishment i.e. the punishment was excessive and disproportionate. In fact, the State authorities by their conduct in not imposing any punishment inspite of the liberty granted by the Tribunal negated the entire disciplinary proceedings. The Tribunal has failed to appreciate the matter in correct perspective.

27. Without going into the question any further as to applicability of Fundamental Rule 54-A (2) (i) & (3), we have no doubt that the petitioner could not have been totally denied pay and allowances for the relevant period on the principle of 'No Work No Pay' as, the petitioner was kept out of service on account of punishment of dismissal which was illegal and excessive and was ultimately set aside.

28. The learned counsel appearing for the petitioner in all fairness submitted that only 50% of the admissible pay and allowances for the period from 11.12.2007 to 07.03.2017 may be paid to the petitioner.

29. In view of the discussion made hereinabove, we are of the view that in the facts and circumstances of the case, this would be a fair and reasonable amount to be paid to the petitioner subject to the petitioner furnishing a certificate by him stating therein that he was not gainfully employed at any place from the date of dismissal till his reinstatement.

30. In view of the aforesaid reasons, this writ petition is **allowed**. The impugned order dated 22.03.2023, passed by the learned State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No.1332/2020 (Shiv Bachan Gautam vs. State of U.P. and others), is hereby set aside and the claim petition is allowed. The orders dated 30.11.2018, 06.11.2019 and 07.09.2020 are also quashed. We direct the respondents to pay 50% of the pay and allowances admissible to the petitioner for the period from 11.12.2007 to 07.03.2017 within two months from the date of presentation of a certified copy of this order. Needless to say that the aforesaid payment shall be made to the petitioner subject to furnishing a certificate by him stating therein that he was not gainfully

employed at any place from the date of dismissal till his reinstatement.

(2025) 9 ILRA 756
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.09.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 6045 of 2024

Surendra Giri ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Alok Singh

Counsel for the Respondents:
C.S.C., Rishabh Tripathi

Issue for consideration

Which date of birth shall be deemed to be correct, where a government servant has not passed High School or equivalent exam?

Headnotes

A. Service Law - Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974: Rules 2 & 3 - Where a government servant has not passed High School or equivalent exam, his DOB recorded in his service book shall be deemed to be his correct DOB. The DOB, as recorded in the service book, would be conclusive in all respects, more particularly when there is no interpolation made in the service book as far as the DOB is concerned. (Para 18, 20, 21)

The petitioner, who was engaged on 16.02.1986 as a daily wager and was regularized vide order dated 16.04.2011, is before this Court raising a challenge to the order dated 05.04.2024, whereby the petitioner has been informed that, as per his date of birth of 15.01.1964, he would stand retired on 31.01.2024. As per the petitioner, the DOB is 01.12.1965, as duly finds place in the service book, and thus it is prayed that once the service book, prepared in the year 2010, has all along indicated the DOB of the petitioner as 01.12.1965, the impugned order retiring the petitioner with effect from 31.01.2024 be set aside, and the respondents be directed to continue the services of the petitioner as per the DOB of 01.12.1965 till 31.12.2025. (Para 16)

However, the respondents have placed reliance on a seniority list issued on 24.12.2003, which recorded the DOB of the petitioner as 15.01.1964, as well as on the quarterly progression report, which also recorded the DOB of the petitioner as 15.01.1964 and the Aadhaar Card of the petitioner. (Para 19)

There is no dispute that the DOB as recorded in the service book is 01.12.1965 and also that there is no interpolation in the service book so far as it pertains to the DOB of the petitioner. **Merely because the respondents had issued a seniority list on 24.12.2003 i.e. much prior to preparation of the service book in the year 2010 and the quarterly progression report, which indicated the DOB of the petitioner as 15.01.1964, which incidentally are all those documents issued both prior to and subsequent to the preparation of the service book in the year 2010, cannot give any advantage to the respondents, more particularly when both the seniority list and the quarterly progression report indicating the DOB of the petitioner as 15.01.1964 are contrary to the entry as recorded in the service book,** which entry has to be treated as final keeping in view the fact that the petitioner is not High School pass rather class-V pass and as per Rules 2 & 3 of Rules, 1974, **where a government servant has not passed High School or equivalent exam, his DOB recorded in his service book shall be deemed to be his correct DOB.** (Para 21, 30)

B. In case of no fault of the employee, if he is kept away from work, the respondents cannot be allowed to say that the principle of no work no pay would be applicable. (Para 34)

Respondents are commanded to continue the petitioner in service on the basis of his DOB as 01.12.1965. As the petitioner has been retired by the respondents with effect from 31.01.2024, as such, the petitioner would also be entitled for arrears of pay for the period (he was kept out of service) of service and other consequential benefit till his reinstatement in pursuance to this order. (Para 33)

Writ petition allowed. (E-4)

Case Law Cited

1. Suresh Yadav Vs. State of U.P. and others, 2024 AHC 108904 (Para 10)

2. U.P. Power Corporation Limited and another Vs. Satya Ram and another, 2025 INSC 339 (Para 14)

3. The General Manager, M/s Barsua Iron Ore Mines Vs. The Vice President, United Mines Mazdoor Union and others, 2024 INSC 264 (Para 14)

4. Bharat Coking Coal Limited and others Vs. Shyam Kishore Singh, (2020) 3 SCC 411 (Para 26)

5. Union of India Vs. K.V. Jankiraman, 1991 AIR 2010 (Para 34)

List of Acts

Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974.

List of Keywords

Service, salary, daily wager, service book.

Appearances for Parties

For Petitioner: Alok Singh
For Respondent: C.S.C., Rishabh Tripathi

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

1. Heard learned counsel for the petitioner, learned Standing Counsel appearing on behalf of the respondent No.1 and Sri Rishabh Tripathi, learned counsel appearing for the respondents No.2 to 6.

2. The instant writ petition has been filed praying for the following main reliefs:-

"i) Issue a writ, order, or direction in the nature of Certiorari, thereby quashing the impugned retirement order dated 05.04.2024 passed by opposite party no.4, contained as ***Annexure no 1*** *to the writ petition.*

ii) Issue a writ, order, or direction in the nature of Mandamus commanding the opposite parties to allow the petitioner to work on the post of Peon as per date of birth recorded in the service book i.e 01.12.1965 and pay him salary each and every month.

iii) Issue a writ, order, or direction in the nature of Mandamus commanding the opposite parties to pay arrears of salary for the month of February and March 2024, forthwith."

3. The case set forth by the learned counsel for the petitioner is that the petitioner, who is class-V pass, was appointed as a daily wager in the year 1986. The services of the petitioner were regularized vide order dated 13.04.2011, with effect from 13.04.2010, as specifically finds place in the service book, a copy of which is annexure-SCA-1 to the supplementary counter affidavit filed on behalf of respondents No. 2 to 6, dated 11.11.2024.

4. As per the service book, the petitioner's date of birth is recorded as 01.12.1965

5. The dispute arose when the impugned order dated 05.04.2024 was issued by the Corporation, indicating that the petitioner is due to retire on

superannuation by treating his date of birth as 15.01.1964.

6. Raising a challenge to the said order, the instant petition has been filed.

7. The sheet anchor for the petitioner's date of birth being 01.12.1965 is the endorsement in the service book, which specifically records the petitioner's date of birth both in numerals and in words as "1-12-1965 (एक दिसम्बर उन्नीस सौ पैसठ)".

8. Sri Rishabh Tripathi, learned counsel appearing on behalf of respondents No. 2 to 6, states that the service book was prepared in the year 2010, after the petitioner had been regularized in service vide order dated 13.04.2011

9. The argument of learned counsel for the petitioner is that once the date of birth stands recorded as 01.12.1965 in the service book, consequently, there cannot be any occasion for the respondents to retire the petitioner by treating his date of birth as 15.01.1964, and thus the petition is for setting aside the impugned order of retirement and for continuing the services of the petitioner till he attains the age of superannuation as per the date of birth of 01.12.1965, i.e., till 31.12.2025.

10. In this regard, reliance has also been placed by the learned counsel for the petitioner on the judgment of this Court in the case of **Suresh Yadav vs. State of U.P. and others, 2024:AHC:108904**, to argue that this Court has held that the date of birth of an employee who has not passed the High School cannot be changed once originally recorded at the time of entry into service.

11. Responding, Sri Rishabh Tripathi, learned counsel appearing for respondents No. 2 to 6, argues that as per the seniority list issued by the respondents on 24.12.2003, a copy of which is annexure-CA-1 to the counter affidavit dated 21.08.2024, the name of the petitioner stood placed at serial No. 19, duly recording his date of birth as 15.01.1964 and his date of entry into service as 16.02.1986. Further, contending that in the quarterly progression report sent by the competent authority, a copy of which is annexure-CA-2 to the counter affidavit, the date of birth of the petitioner is also indicated as 15.01.1964, which also finds in the Aadhaar Card originally produced by the petitioner and thus it is apparent that the date of birth of the petitioner is 15.01.1964, which has stood all along, and merely because of an error committed in the entry in the service book by recording the date of birth of the petitioner as 01.12.1965, the petitioner would not be entitled to any benefit.

12. Sri Rishabh Tripathi, learned counsel appearing for respondents No. 2 to 6, also states that the date of engagement of the petitioner as recorded in the seniority list is 16.02.1986.

13. Sri Rishabh Tripathi, learned counsel appearing for respondents No. 2 to 6, states that in the service book, the date of engagement of the petitioner has been indicated as 16.02.1980, and consequently, in case the date of birth of the petitioner is taken as 01.12.1965, he would have been 15 years of age and could not have validly been appointed.

14. The argument of Sri Rishabh Tripathi, learned counsel appearing for respondents No. 2 to 6, is that even if an erroneous entry has been made in the service book, yet the petitioner cannot

derive any advantage therefrom, keeping in view the law laid down by the Hon'ble Supreme Court in the case of **U.P. Power Corporation Limited and another vs. Satya Ram and another, 2025 INSC 339 as well The General Manager, M/s Barsua Iron Ore Mines vs. The Vice President, United Mines Mazdoor Union and others, 2024 INSC 264**.

15. Heard the learned counsel for the parties and perused the records.

16. From a perusal of the records, it emerges that the petitioner, who was engaged on 16.02.1986 as a daily wager and was regularized vide order dated 16.04.2011, is before this Court raising a challenge to the order dated 05.04.2024, whereby the petitioner has been informed that, as per his date of birth of 15.01.1964, he would stand retired on 31.01.2024. As per the petitioner, the date of birth is 01.12.1965, as duly finds place in the service book, and thus it is prayed that once the service book, prepared in the year 2010, has all along indicated the date of birth of the petitioner as 01.12.1965, the impugned order retiring the petitioner with effect from 31.01.2024 be set aside, and the respondents be directed to continue the services of the petitioner as per the date of birth of 01.12.1965 till 31.12.2025.

17. The sheet anchor of the claim of the petitioner is the date of birth of 01.12.1965, as admittedly recorded in the service book, which incidentally had also been perused by this Court when the original service book was produced, as specifically stands recorded in the order dated 12.11.2024.

18. The aforesaid date of birth, as recorded in the service book, would obviously be conclusive in all respects, more particularly when there is no interpolation made in the service book as far as the date of birth is concerned

19. However, the respondents have placed reliance on a seniority list issued on 24.12.2003, which recorded the date of birth of the petitioner as 15.01.1964, as well as on the quarterly progression report, which also recorded the date of birth of the petitioner as 15.01.1964 and the Aadhaar Card of the petitioner.

20. Suffice it to state that the entry made in the service book has to be treated as final so far as it pertains to the petitioner, keeping in view the facts of the case.

21. There is no dispute that the date of birth as recorded in the service book is 01.12.1965 and also that there is no interpolation in the service book so far as it pertains to the date of birth of the petitioner. Merely because the respondents had issued a seniority list on 24.12.2003 i.e. much prior to preparation of the service book in the year 2010 and the quarterly progression report, which indicated the date of birth of the petitioner as 15.01.1964, which incidentally are all those documents issued both prior to and subsequent to the preparation of the service book in the year 2010, cannot give any advantage to the respondents, more particularly when both the seniority list and the quarterly progression report indicating the date of birth of the petitioner as 15.01.1964 are contrary to the entry as recorded in the service book, which entry has to be treated as final keeping in view the fact that the petitioner is not High School pass rather class-V pass and as per Rules 2 & 3 of Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules,

1974, where a government servant has not passed High School or equivalent exam, his date of birth recorded in his service book shall be deemed to be his correct date of birth.

22. In this regard, it would be apt to refer to a judgment of this Court in the case of **Suresh Yadav (supra)** wherein this Court has held as under :-

"8. In my considered view without changing the date of birth originally recorded in the service book, an employee cannot be made to retire. The basic philosophy behind the service jurisprudence is that there is contract of employment between employer and employee. The service book maintained by employer is a part of the contract of employment and any change therein has to first take place as it would be altering the condition of employment. The respondent local bodies was in clear error of law in superannuating the petitioner at an earlier age than what he would have attained as per service book entry.

9. One of the arguments advanced on behalf of the contesting respondent local body by learned counsel appearing in that behalf has been that petitioner did not pass out class eight from the institution which he was relying upon and instead he passed out class 8th examination from another institution. The institution from which petitioner claimed to have passed out, it was one Avatar Yadav who was student and transfer certificate of Avatar Yadav has been brought on record, but I find that there is no date of birth entered in that certificate, nor certificate bears signature of Principal or seal of Principal, nor certificate carries any date of issuance. It seems to be document either got prepared for the purpose of the case to defend the decision of the Chairman or somehow obtained that to mislead the Court on facts.

.....

11. Learned counsel for the respondent local body has not been able to show any rule or law otherwise which may entitled the local body to change date of birth of employee originally entered in service book. In the circumstances provisions as contained under Rules 2 and 3 of Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 are reproduced hereunder:

"2.[Determination of correct date of birth or age.-The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Goverment service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever].

3. Change of date of birth-Bona fide mistake.-The date of birth can be changed only if there was a bona fide mistake. The principle of estoppel will apply and hence when the Government servant had indicated a particular date of birth in his application form or any other

document at the time of employment the Court should not change that date of birth."

12. From bare reading of the aforesaid provisions, it is clear that date of birth of employee who has not passed the High School Certificate cannot be changed once originally recorded at the time of entry in service.

13. In my above view I find support in the judgments of a coordinate benches of this court in the case of ***Surendra Singh v. State of U.P and Others, 2019 5 ADJ 365****, and of the Division Bench judgment in the case of* ***Mohan Singh v. U.P. Rajya Vidyut Utpadan Ltd. And Others, 2012 (8) ADJ 383."***

23. So far as the judgment of the Hon'ble Supreme Court in the case of **Satya Ram (supra)** is concerned, suffice it to say that in the said case, the two respondents had been engaged in 1971 and 1973. There was no material to indicate their ages at that time. The Hon'ble Supreme Court presumed that, obviously, at the time of engagement they must have been major, i.e., 18 years of age when they were engaged in the service of a state instrumentality, and consequently would attain the age of 60 years in 2013 and 2015 respectively, and in any event had rendered forty years of service by 2013.

24. The said facts are not attracted in the facts of the instant case, inasmuch as it is not a case that the petitioner has rendered forty years of service under the respondent, and thus the said judgment would not have any applicability in the facts of the instant case.

25. So far as the judgment of the Hon'ble Supreme Court in the case of **Barsua Iron Ore Mines (supra)** is concerned, it appears that therein an employee had initially entered service in the year 1972 and on the basis of an oral declaration, his date of birth was recorded as 27.12.1948. The said date was accepted and also signed by the employee concerned. In the year 1982, the employee changed his initially recorded date of birth from 1948 to 1955, again without providing any documentary proof. In those circumstances, the Hon'ble Supreme Court held that there was no occasion for the employee concerned to change his date of birth after almost a decade.

26. Though the learned counsel for the respondents along with the supplementary counter affidavit has filed a judgment of the Hon'ble Supreme Court as annexure-SCA-3, namely, **Bharat Coking Coal Limited and others vs. Shyam Kishore Singh, (2020) 3 SCC 411**, yet no arguments were advanced upon the same.

27. However, considering that the said judgment is on record, the Court also proceeds to consider the said judgment.

28. The said judgment pertained to an employee having preferred an application for change of his date of birth from 04.03.1950, as recorded in his service records at the time of his appointment in year 1982, to 20.01.1955, which application was filed in the year 2009 just prior to his retirement on 31.03.2010. In such circumstances, the Hon'ble Supreme Court held that an application for change in date of birth at the fag end of the career would be impermissible.

29. Again, the said judgment would have no applicability in the facts of the instant case, once the petitioner is claiming to be retired on the basis of his date of birth

as recorded in the service records and has not prayed for any change in his date of birth.

30. In the instant case, it is not that the petitioner has changed his date of birth after having entered into service, inasmuch as admittedly the date of birth recorded at the time of preparation of the service book, i.e., in the year 2010, still continues to remain the same as of date, i.e., 01.12.1965. As already indicated, there is no interpolation or manipulation in the said date of birth. Thus, merely because the respondents have issued an erroneous seniority list and quarterly progression report indicating the date of birth of the petitioner as 15.01.1964, the same would not resile from the date of birth as recorded in the service book, i.e., 01.12.1965.

31. So far as the argument of Sri Rishabh Tripathi, learned counsel appearing for respondents No. 2 to 6, that the entry into service of the petitioner as recorded in the service book is 16.02.1980, the said argument also merits to be rejected and is rejected for there is a clear discrepancy in the date of appointment mentioned in the seniority list (16.02.1986) vis-a-vis the service book (16.02.1980) and moreover, in the instant case, the dispute does not pertain to date of appointment of the petitioner; rather pertains to date of birth.

32. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 05.04.2024, a copy of which is annexure-1 to the petition, is set aside.

33. A writ of mandamus is issued, commanding the respondents to continue the petitioner in service on the basis of his date of birth as 01.12.1965. As the petitioner has been retired by the respondents with effect from 31.01.2024, as such, the petitioner would also be entitled for arrears of pay for the said period of service and other consequential benefit till his reinstatement in pursuance to this order.

34. The arrears of pay are being granted to the petitioner keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Union of India vs. K.V. Jankiraman, 1991 AIR 2010**, wherein it has been held that in case of no fault of the employee, if he is kept away from work, the respondents cannot be allowed to say that the principle of no work no pay would be applicable.

35. Let the respondents comply with this order within a period of six weeks from the date of receipt of a certified copy of this order.

(2025) 9 ILRA 762
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 9332 of 2023

Shivam Sonkar & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Jai Shankar Pandey, Advocate

Counsel for the Respondents:
Rajesh Kumar Tiwari, R.M. Saggi, Akhilesh Kumar Ojha

Issues for consideration

Whether petitioner's claim of compassionate appointment in the absence of a succession certificate secured by him from the competent Court, is maintainable or not?

Headnotes

A. Service Law - Hindu Marriage Act, 1955: Section 5; Indian Succession Act, 1925: Section 372 - A succession certificate and a nomination stand at par, in that, that both do not confer upon the person, nominated or the holder of a certificate, beneficial interest in the movables, money or securities that he receives, held by third parties on behalf of the deceased. The 5th and 6th respondents would not at all be better placed in establishing their claim of being the only children of the deceased employee, entitled to claim the post retiral benefits on the basis of a succession certificate. The nominee or the holder of a certificate may hold beneficial interest too in the whole or a part that he receives under it. But, the beneficial interest must exist independent of the nomination or the succession certificate. *A fortiori*, if a nomination is already there in favour of the second petitioner, there is little scope for parties to vie for a succession certificate. (Para 19)

In this conspectus of facts and the law, the second petitioner here, who is also the recorded nominee in the deceased's service papers, is entitled to receive all post retiral benefits, including family pension on account of the deceased employee's services. (Para 21)

B. The remark in the order impugned, requiring the petitioner to obtain a succession certificate as a condition precedent to the consideration of his claim for compassionate appointment, is misconceived. The General Manager could not have committed a more grave error than think that the first petitioner's claim for compassionate appointment would depend upon the said petitioner securing a succession certificate u/s 372 of the Succession Act. Clearly, **a succession certificate issued under the Succession Act entitles the holder of the certificate, as already remarked, to collect the deceased's outstandings, that is to say, debts and securities in the hands of third parties. It is not at all something, which has any relation to the entitlement of a dependent of the deceased to compassionate appointment under the employers' policy expressed in administrative circular or rules.** The opinion, held by the General Manager, is the result of his utter ignorance of the law and more than that, the ill-found confidence amongst educated persons, who are lay as distinguished from legal, in forming opinions on purely legal matters without trained advice. (Para 23)

The claim of the first petitioner is based on a case about the deceased leaving behind a family of five souls – a widow, two married daughters and two dependent sons. There is nothing said by the first petitioner about the deceased's first wife or the two siblings of half blood. Respondent Nos.5 and 6 have come forward with a case, where they say, it is their mother, who was the deceased's wife, whereas the first petitioner's mother never had matrimonial status. Once, the first petitioner's mother has been held to be the deceased's wife, his claim for a consideration of his candidature for compassionate appointment cannot be held not maintainable. (Para 22)

C. The denial of right to a child for consideration under the compassionate appointment scheme, whose mother's marriage to his father is void u/s 11 of the Act of 1955, has been held to be violative of Article 14 of the Constitution by the Supreme Court. Quite apart from the consideration that the first petitioner's mother has been held to be the deceased Kripa Shankar's wife, even if it is assumed that she was not the lawfully wedded wife of the deceased, as asserted by respondent Nos.5 and 6, **the right to a consideration for compassionate appointment cannot be denied to a child born outside wedlock, who is regarded as legitimate, even if the marriage is void u/s 11 of the Act of 1955, by virtue of sub-Section (1) of Section 16 of that Act.** (Para 27, 28)

D. While there would be no difference as regards the maintainability of the first petitioner's candidature for

compassionate appointment under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, the fact that the first petitioner's mother has been held to be lawfully wedded wife of the deceased Kripa Shankar, would attach more weight to that candidature because of Rule 7 of the Rules, 1974. (Para 28)

Unless there is a rival claim by respondent Nos.5 and 6, preferred after the institution of the petition or hereafter, Rule 7 of the Rules of 1974 may not come into play at all. The reason is that from the state of pleadings, it nowhere appears that respondent Nos.5 and 6, or either of them, have staked their own claim for compassionate appointment. Theirs' has been just a case of resisting the first petitioner's claim for compassionate appointment; not canvassing their own. If, however, their claim is there and made in accordance with rules within the limitation prescribed, **the claim of the first petitioner and those of respondent Nos.5 and 6, or one of them, whoever comes up, would have to be considered and dealt with by the General Manager in accordance with Rule 7 of the Rules of 1974.** (Para 30, 31)

Writ petition allowed. (E-4)

Case Law Cited

1. Shiramabai Vs. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and another, 2023 SCC OnLine SC 1026 (Para 12)

2. Banarasi Dass Vs. Teeku Dutta (Mrs) and another, (2005) 4 SCC 449 (Para 18)

3. Pawan Kumar Masurkar Vs. State of M.P. and others, I.L.R. 2024 M.P. 196 (Para 24)

4. Union of India and another Vs. V.R. Tripathi, (2019) 14 SCC 646 (Para 27)

5. Mukesh Kumar and another Vs. Union of India and others, (2022) 14 SCC 161 (Para 28)

6. Kumari Manisha Vs. State of U.P., AIR Online 2024 ALL 1481 (Para 28)

List of Acts

Hindu Marriage Act, 1955; Indian Succession Act, 1925; Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974;

List of Keywords

Service, compassionate appointment, post retiral benefits.

Appearances for Parties

For Appellant: Mr. Jai Shankar Pandey, Advocate

For Respondent: Mr. Rajesh Kumar Tiwari, Addl. Chief Standing Counsel for respondent No.1 Mr. R. M. Saggi, Advocate for respondent Nos. 2, 3 and 4 Mr. Akhilesh Kumar Ojha, Advocate for respondent Nos. 5 and 6

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

1. This writ petition is directed against an order of the General Manager, Water Works Department, Nagar Nigam, Kanpur dated 11.04.2023, rejecting the first petitioner's claim for compassionate appointment. So far as petitioner No.2 is concerned, she seeks a mandamus commanding the General Manager, Water Works Department, Kanpur Nagar Nigam to pay her post retiral benefits on account of her husband's services, including gratuity, provident fund, as also family pension, together with interest accrued on sums of money due under different heads.

2. It is not in dispute that Kripa Shankar, the first petitioner's father and the second petitioner's husband, was employed as a Beldar in the Water Works Department (for short, 'the Water Works') within the establishment of the Nagar Nigam, Kanpur (for short, 'the Nigam'). There is also no issue about the fact that he died in harness on 18.06.2021. It is not disputed either that

in Kripa Shankar's service-book, the names of the first petitioner and the second petitioner are recorded as son and wife, respectively. It is also not in dispute that the two petitioners included, in Kripa Shankar's service-book, five members of his family are shown. They are: (1) Smt. Ram Kumari (wife), (2) Smt. Rekha Sonkar, daughter (married), (3) Smt. Surajmukhi, daughter (married), (4) Shivam Sonkar, son, and (5) Shiva Sonkar, son.

3. Upon Kripa Shankar's demise, the second petitioner, Ram Kumari, applied for payment of death-cum-retirement benefits on account of her husband's service, enclosing therewith a copy of Kripa Shankar's death certificate dated 12.08.2021. Also filed along with the claim, was a family membership certificate issued by the Sub-Divisional Officer, Sadar, Kanpur Nagar dated 14.05.2022, where the five family members of Kripa Shankar were shown. The first petitioner, on his part, applied for compassionate appointment on 30.05.2022 to the General Manager, Water Works as the family were reeling under a tremendous financial crisis and on the verge of starvation. The application for compassionate appointment was supported with the family membership certificate, above mentioned, the first petitioner's father's death certificate and affidavits of no objection from the other family members, to wit, Shiva Sonkar, Smt. Surajmukhi and Smt. Rekha. The first petitioner's case is that there is no legal impediment in considering his case for compassionate appointment. However, the Executive Engineer (Headquarters), Water Works, vide order dated 07.06.2022, rejected the first petitioner's claim for compassionate appointment on the specious grounds that the General Manager, Water Works, had declined the claim because the family membership certificate dated 14.05.2022 was not valid for the purpose of government service.

4. The petitioners challenged the said order, moving this Court vide Writ-A No.2587 of 2023. This Court quashed the order dated 07.06.2022 on the ground that the first petitioner being recorded as the deceased's heir in the service-book, the family membership certificate dated 14.05.2022 was a document informative in nature, but not relevant. The Executive Engineer was directed to pass fresh orders, ignoring paragraph No.3 of the family membership certificate dated 14.05.2022. After the said order was served upon the General Manager, Water Works, he again rejected the first petitioner's claim for compassionate appointment on ground that the deceased employee had a first wife, of whom he had two children, Arti Sonkar and Sani Sonkar and that the said fact had not been disclosed in the family membership certificate produced by the first petitioner in support of his claim. The General Manager also relied on Arti Sonkar's Aadhaar Card, PAN Card, her mark-sheet of BA IIIrd year produced by Arti Sonkar and Sani Sonkar, allegedly born to the deceased of his first wife, all of which showed late Kripa Shankar as their father, besides the family membership certificate dated 14.05.2022 (wrongly mentioned as 17.05.2022) issued by the Sub-Divisional Officer, Sadar, Kanpur Nagar, which too shows Kripa Shankar's name as the father of Arti Sonkar and Shiva Sonkar. The General Manager, on occasion, directed the petitioner to secure a succession certificate from the Court of competent jurisdiction.

5. So far as the second petitioner's claim to post retiral benefits due on account

of the deceased's services is concerned, the respondents did not move to pay the same, apparently on ground that there was a case of the deceased marrying a second time during the lifetime of his first wife, of whom too he had two children. The second petitioner's claim was not acknowledged at all.

6. In these circumstances, this writ petition has been moved with a prayer to quash the order, declining the first petitioner's claim and seeking a command to the General Manager to consider his case for compassionate appointment on merits. So far as the second petitioner is concerned, she seeks our mandamus, ordering the respondents to pay post retiral dues for the services rendered by her husband, including a family pension, that is payable under the rules.

7. A notice of motion was issued in this case on 03.07.2023. On 25.07.2023, parties having exchanged affidavits, the petition was admitted to hearing. The hearing proceeded forthwith, though adjourned across a number of dates. The matter was heard at length and judgment reserved. The service-book in original, relating to the deceased Kripa Shankar, was summoned vide order dated 13.10.2023, which was produced on 15.12.2023 before the Court and directed to be kept in safe custody with the Registrar General.

8. Heard Mr. Jaishankar Pandey, learned Counsel for the petitioner, Mr. Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel, appearing on behalf of respondent No.1, Mr. R. M. Saggi, learned Counsel, appearing on behalf of respondent Nos. 2, 3 and 4 and Mr. Akhilesh Kumar Ojha, learned Counsel appearing on behalf of respondent Nos.5 and 6. The original records summoned from the respondents were also perused.

9. In the counter affidavit filed on behalf of the Nagar Nigam and the General Manager, Water Works, the stand taken in paragraph No.6 of the affidavit is that the late Kripa Shankar did marry twice in his lifetime, but not during the lifetime of his first wife, Smt. Kalwati. Kripa Shankar solemnized a second marriage, according to these respondents, with Smt. Ram Kumari after Kalawati had passed away. He had two children born of his first wife, Kalawati to wit, Arti Sonkar and Sani Sonkar. Ram Kumari, his second wife, bore him four children, to wit, Rekha, Surajmukhi, the daughters, besides Shivam and Shiva, the sons. This is the position of the deceased's family, admitted to the employers, represented by respondent Nos.3 and 4. In paragraph Nos.17, 18 and 19, the stand that has been taken by the General Manager, Water Works and the Nagar Nigam, to wit, the employers, is that the family membership certificate produced by the first petitioner, Shivam Sonkar, being incomplete in the sense that it did not mention Arti Sonkar and Sani Sonkar, the deceased's children born of his first wife and a succession case, being Misc. Case No.586/70 of 2022, pending before the Civil Judge (Sr. Div.), Kanpur Nagar, the first petitioner's claim for compassionate appointment could not be considered. The first petitioner was asked to produce a succession certificate in his favour.

10. A separate counter affidavit has been filed on behalf Arti Sonkar and Sani Sonkar, described as Sunni Kumar in the array of parties. In this affidavit, the stand taken is that Smt. Kalawati was the lawfully wedded wife of Kripa Shankar. No divorce by a decree of Court took place

between Smt. Kalawati and the deceased employee. Ram Kumari and Kripa Shankar were never married and she has been described by these respondents by words that were in yesteryears well accepted in daily life and commonplace in legal parlance, but are now the objects of a frown of disapproval, though still there in the English Dictionary. We would not, therefore, mention them, but say that to Ram Kumari, these respondents have ascribed the status of a woman, who lived with the deceased away from wedlock. In paragraph No.8, Kalawati has been asserted to be the only person entitled to receive the deceased's post retiral benefits, and after her, her heirs and LRs, that is to say, Arti Sonkar and Sani Sonkar, respondent Nos.5 and 6.

11. What we notice from the counter affidavit filed by respondent Nos.5 and 6 is that though these respondents assert that the deceased never married Smt. Ram Kumari, but they do not disclose Smt. Kalawati's date of death. On the other hand, the employers, who would generally know the affairs regarding the family of their employee to the extent relevant to his employment, have taken the stand that the deceased married Smt. Ram Kumari after his first wife, Kalawati's demise. If this were not so, they would not have accepted a nomination form for the payment of post retiral benefits in favour of Smt. Ram Kumari, which is there on record, that we have perused. It is difficult in this state of things to conclude in favour of what respondent Nos.5 and 6 say that the deceased never married Smt. Ram Kumari, and that the first petitioner together with his three siblings were born outside wedlock. At least, this is the apparent state of things, which the employers have accepted. It is the policy of the law to presume in favour of legitimacy, so far as marriage and children, born of an ostensible wedlock, are concerned.

12. Reference in this connection may be made to **Shiramabai v. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and another, 2023 SCC OnLine SC 1026.** The facts in **Shiramabai** (supra), that have a strong bearing on the principle laid down, squarely applicable here, also have a striking similarity to the facts in this case. The facts in **Shiramabai** can best be recapitulated in the words of their Lordships as these figure in the report. These read:

"4. Late Subedar Bhave was enrolled in the Army in the year 1960 on 21st July, 1960. On 17th July, 1972, he got married to one Smt. Parvati who died in about two and a half years on 26th January, 1975. Thereafter, the deceased got married to one Smt. Anusuya on 17th March, 1975. During the subsistence of his marriage with Anusuya, he married the appellant no. 1 herein on 21st February, 1981. Appellants No. 2 and 3 are the offspring of the deceased and appellant no. 1. On 25th January, 1984, the deceased was discharged from service at his request and was granted service pension at the rate of Rs. 376/- (Rupees three hundred seventy six only) per month. On 15th November, 1990, the deceased and Anusuya were granted a decree of divorce by mutual consent M.C. No. 21/1990 and he paid a lumpsum amount of Rs. 15,000/- (Rupees fifteen thousand only) to her. Thereafter, the deceased approached the respondent No. 2 for deleting the name of Anusuya and endorsing the name of the appellant No. 1 in the PPO. He also submitted a certificate dated 08th October, 1994 issued by the

Village Sarpanch, Gram Panchayat Bahirewadi, certifying that he and the appellant No. 1 had got married along with a copy of their wedding card as proof of the marriage.

5. Subedar Bhave expired in the year 2001 on 12th January, 2001. Thereafter, appellant No. 1 approached the respondents for grant of family pension vide application dated 09th July, 2001. The said request was, however, rejected by the respondents vide letter dated 01st October, 2001 on the ground that the deceased had got divorced in November, 1990, whereas the appellant No. 1 claimed to have got married to him in February, 1981, during the subsistence of the earlier marriage.

6. In 2005, the appellants instituted a civil suit for declaration praying inter alia for issuing directions to the respondents to disburse the pensionary benefits payable on the demise of the deceased, Subedar Bhave. As noticed above, the trial Court decreed the said suit in favour of the appellants and held that they were entitled to receive the terminal benefits of the deceased, particularly, since no claim was ever laid on the said amount by his ex-wife Anusuya. Aggrieved by the said order, the respondents preferred an appeal (Regular Appeal No. 70 of 2008), which was allowed and the judgment and decree passed by the learned Civil Judge was set aside. The said order was assailed by the appellants in a Regular Second Appeal No.6079 of 2010 that came to be dismissed by the High Court. Subsequently, on the basis of the Review Application, the court clarified vide order dated 16th October, 2014 that the appellants No. 2 and 3 herein would be entitled to the estate of Late Subedar Bhave which is in the custody of the respondents."

13. The question, that arose for consideration in **Shiramabai**, is culled out in paragraph 11 of the report, which reads:

"11. We have heard the arguments advanced by learned counsel for the parties, perused the records and the impugned judgment. The limited issue that requires to be answered is whether the appellants would be entitled to claim pensionary benefits of Late. Subedar Bhave in the facts of the instant case where he had got married to the appellant No. 1 during the subsistence of his marriage with Anusuya, but, subsequently a decree of divorce was passed, dissolving the said marriage."

14. In answering the question, their Lordships of the Supreme Court held:

"14. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:

"114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

15. In this above context, we may refer to Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, 1927 SCC OnLine PC 51, where the Privy Council observed thus:

"...where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.

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"The parties lived together for twenty years in the same house, and eight children were born to them. The husband during his life recognized, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognized as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess-all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody."

16. In Mohabbat Ali Khan v. Muhammad Ibrahim Khan, 1929 SCC OnLine PC 21, it was again observing by the Privy council that:

"...The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years..."

17. Similarly, in Badri Prasad v. Dy. Director of Consolidation, (1978) 3 SCC 527, this Court held as follows:

"...A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy..."

18. In S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi, (1994) 1 SCC 460, this Court held as under:

"4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see Gokal Chand v. Parvin Kumari, (1952) 1 SCC 713).

19. It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place (refer : Tulsa v. Durghatiya, (2008) 4 SCC 520).

22. In Kattukandi Edathil Valsan's Case (supra), citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property.

23. It can be discerned from the aforesaid line of decisions that the law infers a presumption in favour of a marriage when a man and woman have continuously cohabitated for a long spell. No doubt, the said presumption is rebuttable and can be rebutted by leading unimpeachable evidence. When there is any circumstance that weakens such a presumption, courts ought not to ignore the same. The burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity.

24. In the instant case, if the period upto the year 1990 was to be excluded as the marriage between Late Subedar Bhave and Anusuya had got dissolved only on 15th November, 1990, fact remains that even thereafter, the deceased had continued to cohabit with the

appellant No. 1 for eleven long years, till his demise in the year 2001. The appellant No. 1 was the mother of two children born from the relationship with the deceased, namely, appellants Nos. 2 and 3. Appellants No. 2 and 3 have been held entitled to the estate of the deceased by virtue of the order passed by the High Court on the Review application moved by them. In the above background, a presumption ought to have been drawn in favour of the validity of the marriage between the deceased and the appellant No. 1, more so, when during his life time, the deceased had approached the respondent authorities for seeking deletion of the name of his previous wife - Anusuya from his service record and for endorsement of the name of the appellant No. 1 therein, which was duly acted upon by the respondents vide letter dated 05th July, 1999. It is also not in dispute that the ex-wife did not claim any pension from the respondents on the demise of Subedar Bhave."

15. The facts, upon which the principle in favour of sustaining the validity of a marriage and the legitimacy of children born to parties, is attracted, would apply with greater force here. The reason is that in **Shiramabai**, there was no dispute on facts that the marriage between Shiramabai and Subedar Pundalik Bhave was solemnized in February, 1981, whereas marriage between the Subedar and his wife, Anusuya, was undone by a decree of divorce passed in November, 1990. The marriage between Subedar Bhave and Shiramabai would certainly have been void when solemnized in view of Section 5 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), but with passage of time and consistent cohabitation as man and wife, with no objection from Anusuya till the decree of divorce was passed, and until time that Subedar Bhave died, led the law to lay to lean in favour of holding legitimacy of the marital bond. In the present case, we say the principle applies on surer footing, because on one hand, there is no specific date mentioned, on which petitioner No.2 married the deceased Kripa Shankar, and, on the other, respondent Nos.5 and 6, the children of the deceased's first wife, Kalawati, do not mention the date of her demise. It is, therefore, not a case where on stated facts, proven by evidence or not disputed at all, the deceased married Ram Kumari, during the lifetime of his first wife and subsistence of that marriage. As already remarked, the respondents, who are presumed to be in some know of the affairs of their employees, accept the position that the deceased had married Ram Kumari after his first wife, Kalawati's death.

16. The fact that the marriage between the two continued over a long period of time is beyond cavil because the children of parties, to wit, Ram Kumari and the deceased, Kripa Shankar, were all adults in the third decade of their life. To regard a marriage, as old as this, and, that too, in the absence of facts, showing that the deceased actually married Ram Kumari while his first wife, Kalawati was alive, would be to do violence to that principle of great moment, which legitimizes the institution of the family and saves it from legal disapproval for the want of evidence aliunde. This is a principle of the law, which guides society and lends stability to the institution of marriage, where a superficial vantage of the society would compel it to look down upon with disdain at a marital bond of some uncertain or doubtful origin. The principle must, therefore, be given effect to with full flourish and extended to all logical consequences.

17. Here, it must be added that it is respondent Nos.5 and 6, who, in unison,

say that the second petitioner and the deceased were never married. In the face of the respondent employers accepting the marriage and the second petitioner asserting the status, if the 5th and the 6th respondents were to assail it to any consequence, they ought have instituted a suit for declaration and proved the status, which they seek to establish by producing evidence before the Court at the trial of such suit.

18. It must also be remarked here that so far as the succession case goes, it is a statutory proceeding under Section 372 of the Indian Succession Act, 1925 (for short, 'the Succession Act') with a very limited scope and consequence. A person, in whose favour a succession certificate is issued, establishes no title in himself to receive the moneys, mentioned in the schedule to the certificate. The certificate does not confer any beneficial interest upon its holder to utilize the money that he receives under it as his own property. A certificate of this kind, which is limited in its scope to receive from a third party movables, including money of another, who is no more, is valid for the purpose of giving a legal discharge to that other against the rightful claimants to the money and other movables. In support of this principle, reference may be made to **Banarasi Dass v. Teeku Dutta (Mrs) and another, (2005) 4 SCC 449**, where it was held:

14. The main object of a succession certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of deceased persons. All that the succession certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A succession certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act, or is compelled by the decree of a court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. ..."

19. The 5th and 6th respondents, therefore, would not at all be better placed in establishing their claim of being the only children of the deceased employee, entitled to claim the post retiral benefits on the basis of a succession certificate. Here, it must also be remarked that a succession certificate and a nomination stand at par, in that, that both do not confer upon the person, nominated or the holder of a certificate, beneficial interest in the movables, money or securities that he receives, held by third parties on behalf of the deceased. The nominee or the holder of a certificate may hold beneficial interest too in the whole or a part that he receives under it. But, the beneficial interest must exist independent of the nomination or the succession certificate. A fortiori, if a nomination is already there in favour of the second petitioner, there is little scope for parties to vie for a succession certificate.

20. In principle, what would clinch the issue about the entitlement to receive the

whole or a share in the post retiral benefits, would be a suit by the 5th and 6th respondents to establish their case. But, given the fact that the deceased's wife, the second petitioner, is there, who is also the nominee, leaves slender scope for the children, either born of the first wife or the second, to stake claim to the post retiral benefits on account of the deceased's services in the presence of the wife (the widow). These have to go almost universally under all service rules to the widow; not the children.

21. In this conspectus of facts and the law, we do not have the slightest of doubt that the second petitioner here, who is also the recorded nominee in the deceased's service papers, is entitled to receive all post retiral benefits, including family pension on account of the deceased employee's services.

22. This takes us to the claim of the first petitioner, Shivam Sonkar, which relates to the consideration of his case for compassionate appointment. The claim of the first petitioner is based on a case about the deceased leaving behind a family of five souls - a widow, two married daughters and two dependent sons. There is nothing said by the first petitioner about the deceased's first wife or the two siblings of half blood. Respondent Nos.5 and 6 have come forward with a case, where they say, it is their mother, who was the deceased's wife, whereas the first petitioner's mother never had matrimonial status. According to these respondents, the first petitioner's mother was never the deceased's wife and he is not a legitimate child. We have already considered this issue in the earlier part of this judgment and held the first petitioner's mother to be the lawfully wedded wife of the deceased. Once, the first petitioner's mother has been held to be the deceased's wife, his claim for a consideration of his candidature for compassionate appointment cannot be held not maintainable.

23. The remark in the order impugned, requiring the petitioner to obtain a succession certificate as a condition precedent to the consideration of his claim for compassionate appointment, is misconceived. The General Manager could not have committed a more grave error than think that the first petitioner's claim for compassionate appointment would depend upon the said petitioner securing a succession certificate under Section 372 of the Succession Act. Clearly, a succession certificate issued under the Succession Act entitles the holder of the certificate, as already remarked, to collect the deceased's outstandings, that is to say, debts and securities in the hands of third parties. It is not at all something, which has any relation to the entitlement of a dependent of the deceased to compassionate appointment under the employers' policy expressed in administrative circular or rules. The opinion, held by the General Manager, is the result of his utter ignorance of the law and more than that, the ill-found confidence amongst educated persons, who are lay as distinguished from legal, in forming opinions on purely legal matters without trained advice.

24. The Madhya Pradesh High Court was confronted with a similar situation in **Pawan Kumar Masurkar v. State of M.P. and others, I.L.R. 2024 M.P. *196.** The question, which was considered by the Court, is expressed in paragraph 5 of the judgment in the following words:

"whether a person can seek succession certificate in regard to grant of compassionate appointment inasmuch as

that issue is to be determined in terms of the provisions contained in Sections 370 and 374 of the Indian Succession Act, 1925."

25. After doing a survey of the relevant provisions in Part X of the Succession Act, Vivek Agarwal, J. held:

"11. Thus, when these aspects are examined, then it is evident that as per Section 374 of the Indian Succession Act, the District Judge granting a certificate is required to specify the "debts and securities" setforth in the application for the certificate and by no stretch of imagination compassionate appointment is either a 'debt' or a 'security' as defined in the Indian Succession Act. Therefore, issuance of a succession certificate by the concerned Civil Judge may be an act of naivety but it will not bind the High Court while considering the application for grant of compassionate appointment."

26. In the considered opinion of this Court, therefore, the remark and the consideration carried in the impugned order, to the effect that the petitioner's claim is not maintainable in the absence of a succession certificate secured by him from the competent Court, is manifestly illegal.

27. Now, quite apart from the consideration that the first petitioner's mother has been held by us to be the deceased Kripa Shankar's wife, even if we assume that she was not the lawfully wedded wife of the deceased, as asserted by respondent Nos.5 and 6, the right to a consideration for compassionate appointment cannot be denied to a child born outside wedlock, who is regarded as legitimate, even if the marriage is void under Section 11 of the Act of 1955, by virtue of sub-Section (1) of Section 16 of that Act. The denial of right to a child for consideration under the compassionate appointment scheme, whose mother's marriage to his father is void under Section 11 of the Act of 1955, has been held to be violative of Article 14 of the Constitution by the Supreme Court in **Union of India and another v. V.R. Tripathi, (2019) 14 SCC 646. In V.R. Tripathi** (supra), confronted with a circular of the Railways that disentitles children born of a second marriage to employees, who had solemnized that marriage during the lifetime of the first wife, the Supreme Court held:

"15. In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of amending Act 68 of 1976. Legitimacy of a child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16,

however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination."

28. The law laid down in **V.R. Tripathi** was later on endorsed by a three Judge Bench of the Supreme Court in **Mukesh Kumar and another v. Union of India and others, (2022) 14 SCC 161**. I had the privilege to follow **V.R. Tripathi and Mukesh Kumar (supra) in Kumari Manisha v. State of U.P., AIR Online 2024 ALL 1481**. There is, therefore, no worth in the respondents' stand that the

petitioner does not have a candidature to consider, even if he is a child born to his father of a marriage solemnized during the lifetime and subsistence of his father's first marriage. These remarks of ours have been made ex abundanti cautela. Once, we have held that the second petitioner or the first petitioner's mother was after all the deceased Kripa Shankar's wife, all objections on that score go, as already remarked.

29. While there would be no difference as regards the maintainability of the first petitioner's candidature for compassionate appointment under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974'), the fact that we have held the first petitioner's mother to be lawfully wedded wife of the deceased Kripa Shankar, would attach more weight to that candidature. The reason would be presently shown. Rule 7 of the Rules of the Rules of 1974 reads:

"7. Procedure when more than one member of the family seeks employment. *- If more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof."*

(emphasis by Court)

30. Therefore, if the first petitioner and respondent Nos.5 and 6 were all to stake claim for compassionate appointment, the Head of the Office, that is to say, the General Manager, Water Works, would have to consider the claim in accordance with Rule 7, where he would bear in mind, in particular, the interest of the widow, to wit, petitioner No.2.

31. Here, possibly unless there is a rival claim by respondent Nos.5 and 6, preferred after the institution of the petition or hereafter, Rule 7 of the Rules of 1974 may not come into play at all. The reason is that from the state of pleadings, it nowhere appears that respondent Nos.5 and 6, or either of them, have staked their own claim for compassionate appointment. Theirs' has been just a case of resisting the first petitioner's claim for compassionate appointment; not canvassing their own. If, however, their claim is there and made in accordance with rules within the limitation prescribed, the claim of the first petitioner and those of respondent Nos.5 and 6, or one of them, whoever comes up, would have to be considered and dealt with by the General Manager in accordance with Rule 7 of the Rules of 1974.

32. In the totality of circumstances, this petition must succeed.

33. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 11.04.2023 passed by the General Manager, Water Works, respondent No.3, is hereby **quashed**. A mandamus is issued to the General Manager, Water Works, to consider the claim of the first petitioner and also of respondent Nos.5 and 6, if there is one made in accordance with law, bearing in mind the guidance in this judgment and pass orders regarding compassionate appointment within a period of **two months** of the receipt of a copy of this order by the General Manager, Water

Works. A mandamus is further issued to the General Manager as well as the Nagar Ayukt, Nagar Nigam, Kanpur Nagar, to ensure amongst themselves, payment to the second petitioner of post retiral benefits, including pension, gratuity, leave encashment, group insurance and provident fund, due on account of her husband Kripa Shankar's services, together with simple interest at the rate of 6% per annum, within a period of **two months** of receipt of a copy of this order. The second petitioner shall be paid current family pension forthwith.

34. There shall be no order as to costs.

35. Let the original service-book and other records be returned to Mr. R.M. Saggi, learned Counsel appearing on behalf of respondent Nos.2, 3 and 4, for its onward and safe transmission to the Nagar Nigam, Kanpur Nagar.

36. Let a copy of this order be communicated by the Registrar (Compliance) to the Nagar Ayukt, Nagar Nigam, Kanpur Nagar and the General Manager, Water Works Department, Nagar Nigam, Kanpur Nagar.

(2025) 9 ILRA 776
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 9576 of 2025

Dev Dutt Pachauri ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Shireesh Kumar, Utkarsh Kumar

Counsel for the Respondents:
C.S.C.

Issues for consideration

(a) Whether an appeal is maintainable in the present circumstances?
(b) Whether in circumstances where appeal is maintainable against recommendations under provisions of Ss. 13, 14 and 17 of the Act of 2013, the present petition would be entertainable or is required to be relegated to the appellate jurisdiction?

Headnotes

A. Service Law - Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013: Section 13; U.P. Government Servant (Discipline and Appeal) Rules, 1999; Industrial Employment (Standing Orders) Act, 1946: Section 2 - Where provisions of another Act have been incorporated with legislation by reference, the provisions of the Act which is referred to, become an intrinsic part of the legislation to which it is sought to be referred. In such circumstances, the provisions of the Act of 1946 particularly w.r.t. Appellate Authorities would be become applicable upon persons aggrieved by recommendations made under the relevant clauses of Sections 13, 14, and 17 of the Act of 2013. Therefore, the aspect of whether a person aggrieved is a Central Government Employee or State Government Employee loses importance and it is this provision of appeal indicated under Act of 1946 which will prevail. (Para 26)

A perusal of various Sections of the Act of 2013 *prima facie* indicate certain contradiction w.r.t. Rules being framed by appropriate Government. However for the purposes of this particular dispute, Section 29 of the Act of 2013 clearly empowers only the Central Government to issue Rules in terms of the Act and therefore notification of the Rules by the Central Government in terms of Section 29 of the Act of 2013 will be equally applicable upon State Government Employee as well. (Para 27)

Any person aggrieved by recommendations made under relevant

portions of Sections 13, 14 or 17 of the Act of 2013 would have the remedy of appeal to the authorities indicated in terms of notification dated 04.05.2016, as amended from time to time in terms of the Act of 1946. (Para 28)

Preliminary objection w.r.t. availability of appeal therefore is upheld. (Para 29)

B. Whether in such circumstances where appeal is maintainable against recommendations under provisions of Sections 13, 14 and 17 of the Act of 2013, the present petition would be entertainable or is required to be relegated to the appellate jurisdiction. (Para 30)

Notwithstanding any forum of appeal, a writ petition would be entertain-able in case orders under challenge are without jurisdiction or have been passed without adhering the principles of natural justice, amongst other aspects. (Para 32)

In case the complainant could not file the complaint within the prescribed time limit due to circumstances beyond her control, the complaint would be entertain-able in such circumstances. (Para 35)

Prima facie, from submissions advanced by learned counsel for parties and perusal of material on record, it appears that the Local Committee in its report has not adverted to the aspect of complaint being beyond the limitation period as prescribed u/s 9 of Act of 2013. The aspect of whether the complaint would come within view of Section 2(n) of the Act of 2013 has also not been adverted to by Local Committee in its recommendations. Another aspect which will require consideration is whether the entire process of inquiry was completed within one day due to which ample opportunity of defence was not provided to petitioner. (Para 36)

Opposite parties are granted three weeks' time to file a counter affidavit. List this case on 10.10.2025 alongwith service report. Till next date of listing, operation of impugned recommendations dated 01.08.2025 shall remain stayed. (Para 37 to 39)

Stay granted. (E-4)

Case Law Cited

1. Rohitash Kumar and Ors. Vs. Om Prakash Sharma and Ors., (2013) 11 SCC 451 (Para 14)

2. Insolvency and Bankruptcy Board of India Vs. Satyanarayan Bankatlal Malu & Ors., (2024) 6 SCC 508 (Para 25)

3. Girnar Traders (3) Vs. State of Maharashtra & Ors., (2011) 3 SCC 1 (Para 25)

4. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1 (Para 32)

5. Vishwesh Dayal Shrivastava Vs. Union of India & Ors. MANU/UP/2979/2015, 2016 (8) ADJ 597 (Para 35)

List of Acts

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013; U.P. Government Servant (Discipline and Appeal) Rules, 1999; Industrial Employment (Standing Orders) Act, 1946.

List of Keywords

Service, sexual harassment.

Appearances for Parties

For Petitioner: Shireesh Kumar, Utkarsh Kumar

For Respondent: C.S.C

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

1. Heard Mr. Shireesh Kumar, learned counsel for petitioner and learned State counsel for opposite parties no.1 to 6.

1A. Supplementary affidavit filed today is taken on record.

2. Liberty is granted to petitioner to implead the complainant as opposite party no.7 during the course of day.

3. Issue notice to newly impleaded opposite party no.7.

4. Petition has been filed challenging recommendations dated 01.08.2025 submitted in terms of Section 13 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

5. At the very outset, Mr. Sandeep Sharma, learned State Counsel has raised a preliminary objection regarding maintainability of this petition in view of the fact that recommendations submitted in terms of Section 13 of the Act of 2013 are appealable and therefore, petitioner has an alternative and equally efficacious remedy for filing appeal before the Authority concerned in terms of Section 18 of the Act read with Rule 11 of the Rules framed thereunder.

6. In rebuttal thereof, learned counsel for petitioner submits that Section 18 of the Act of 2013 indicates that primarily an appeal is required to be preferred to the Court or Tribunal concerned in accordance with provisions of Service Rules applicable to the said person and it is only where such Rules do not exist then an appeal is required to be preferred in such manner as may be prescribed. It is submitted that petitioner being a Government Servant, the U.P. Government Servant (Discipline and Appeal) Rules, 1999 are applicable upon him but do not indicate any Court or Tribunal as an Appellate Authority and therefore in such circumstances, the benefit of appeal would not be applicable to petitioner since the U.P. State Public Services Tribunal does not have any power of jurisdiction under the Act under which it was constituted to entertain appeals against recommendations made under Section 13 of the Act of 2013.

7. It has been submitted that in such a situation, recourse may be taken to provisions of appeal under Rule 11 of the Rules of 2013 but refer to the aspect of preferring an appeal to the Appellate Authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Learned counsel has thereafter adverted to the aforesaid Act of 1946 to submit that the Appellate Authority under Section 2 thereof means an authority appointed by the appropriate Government in respect of Industrial Establishments under the control of Central Government or Railway Administration or in a major port, mine and for which, it is the Central Government which is the appropriate Authority and in all other cases, it is the State Government.

8. Learned counsel has also drawn attention to definition of 'Industrial Establishment' defined under Section 2(e) of the Act of 1946 to submit that the petitioner would not come within purview of any of the Industrial Establishments as indicated therein. He has also adverted to the notification dated 04.05.2016 issued by the Ministry of Labour and Employment, New Delhi in terms of Rule 11 of the Rules of 2013 to submit that the said notification is only with regard to Central Government Employees whereas petitioner is a State Government Employee and therefore in terms thereof, no such Rules having been notified by the State Government, the Central Government notifications would be inapplicable in the case of petitioner due to which he does not have the remedy of appeal. Learned counsel has also adverted to Section 2(o) of the Act of 2013 to submit that the definition of Workplace also does not also include the petitioner as a Government Servant. It is therefore submitted that in terms thereof, the petitioner does not have an alternative remedy of filing appeal.

9. Learned counsel in the alternative has also raised a plea that even if this Court comes to a conclusion that remedy of appeal is available to petitioner, it would not bar entertain-ability of this petition in view of the fact that recommendations impugned have been passed without jurisdiction and are therefore not in consonance with the wednesbury principle.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record including the statutory provisions, it is evident from a bare perusal of Section 18 of the Act of 2013 that provision of appeal is available to any person aggrieved from the recommendations made under Section 13 or relevant portions of Sections 14 and 17 of the Act. The provisions of Section 18 of the Act are as follows:-

*"18. **Appeal**.-(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

11. A perusal of the aforesaid provision therefore reveals that provision of appeal is available to any person from the recommendations made under Sections 13, 14 and 17 of the Act of 2013 to the Court or Tribunal in accordance with provisions of the Service Rule applicable upon said person.

12. Admittedly, the Rules of 1999 are applicable upon petitioner being a State Government Servant. Rule 11 of the Rules of 1999 provide for appeal to the next higher Authority from an order passed by the Disciplinary Authority. The provisions of Rule 11 of the Rules of 1999 are as follows:-

*11. **Appeal**. (1) Except the orders passed under these rules by the Governor, the Government servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.*

(2) The appeal shall be addressed and submitted to the appellate authority. A Government servant preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.

(3) The appeal shall riot contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall dismissed summarily."

13. Upon conjoint examination of Section 18 of the Act of 2013 with Rule 11 of the Rules of 1999, it is thus evident that the term ?Authority? as mentioned in Rule 11 of the Rules of 1999 is conspicuously absent in Section 18 of the Act of 2013 which provides appeal only to a Court or Tribunal. In such circumstances, evidently the first portion of Section 18 of the Act of

2013 providing appeal to the Court or Tribunal in accordance with provisions of Service Rules would not be available to petitioner.

14. The principle of Casus omissus is now settled in a catena of decisions that words which had deliberately been omitted in the wisdom of legislature in a statute cannot be supplied by the Court in case the same is unambiguous. The said aspect has been considered by Hon'ble the Supreme Court in the case of **Rohitash Kumar and Ors. vs. Om Prakash Sharma and Ors.** reported in (2013)11 SCC 451 in the following manner:-

"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. The legal maxim "A Verbis Legis Non Est Recedendum" means, "From the words of law, there must be no departure". 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. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide: Nalinakhya Bysack v. Shyam Sunder Haldar & Ors., AIR 1953 SC 148; Mr. Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459; M. Pentiah & Ors. v. Muddala Veeramallappa & Ors., AIR 1961 SC 1107; The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors., AIR 1987 SC 849; and Dadi Jagannadham v. Jammulu Ramulu & Ors., (2001) 7 SCC 71).

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."

15. In such circumstances, we may find recourse to the second portion of Section 18 of the Act of 2013 which provides appeal to an aggrieved person in such manner as may be prescribed. For the said purpose we are required to examine provisions of the Rules of 2013 framed under the Act of 2013 with particular emphasis on Rule 11 thereof which is as follows:

"11. Appeal.- Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub section (2) of section 14 or section 17 or non-implementation of such recommendation may prefer an appeal to the appellate authority notified under

clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).”

16. Upon examination thereof, it is evident that appeal against recommendations in terms of specific provisions of Sections 13, 14 or 17 of the Act of 2013 is provided to the Appellate Authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Section 2 of the Act of 1946 specifically indicates the Appellate Authority to be an authority appointed by the Appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of Appellate Authority under the Act. The term ‘Appropriate Government’ has thereafter been defined in clause (b) of Section 2 of the Act of 1946 in the following manner:-

*S. 2. **Interpretation.**- In this Act, unless there is anything repugnant in the subject of context-*

(b) "appropriate Government" means in respect of industrial establishments under the control of the Central Government or a 9[Railway administration] or in a major Port, mine or oil field, the Central Government, and in all other in all other cases the State Government:

10[Provided that where question arises as to whether any industrial establishment is under the control of the Central industrial establishment is under the control of the Central Government that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties:]"

17. It is thus evident that in terms of the Act of 1946, the appropriate Government with regard to State Government Employees would be the State Government.

18. It is admitted between the parties that till date no notification has been issued by the State Government in terms of Section 2 of the Act of 1946.

19. However a perusal of the provisions of Act of 2013 also indicates the definition of term ‘Appropriate Government’ under Section 2(b) as in relation to workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government or by the State Government in relation to any workplace not covered under clause (i) and falling within the territory, the State Government. The provision of Section 2 (b) is as follows:-

“2. (b) “appropriate Government” means-

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly-

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;”

20. In view thereof, it is evident that with regard to State Government Employees, it is only the State Government which is empowered to issue any

notification prescribing Appellate Authorities in terms of the Act of 2013.

21. However, it is the provisions of Section 29 of the Act of 2013 which strike a discordant note and clearly indicates only the Central Government authorized to make Rules for carrying out provisions of the Act. The said Section 29 of the Act of 2013 does not empower the State Government to frame any Rules under the Act for determination of Appellate Authorities. It is in exercise of powers conferred under Section 29 of the Act of 2013 that the Central Government has framed the Rules of 2013 indicating in Rule 11 the aspect of Appeal under the Act of 1946.

22. Upon examination of all the aforesaid statutory provisions and particularly in view of Section 29 of the Act of 2013, it thus emerges that in terms of Section 29 of the Act of 2013 power has been conferred only upon the Central Government to frame Rules for carrying out provisions of the Act.

23. Rule 11 of the Rules of 2013 referring to the Appellate Authority only in terms of Act of 1946 therefore assumes significance. It is in terms of the Act of 1946 that the notification dated 04.05.2016 has been issued by the Ministry of Labour and Employment, New Delhi, which is as follows:

"New Delhi, the 4th May, 2016

S.O. 1632(E). In exercise of the powers conferred by clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), and in supersession of the notification of the Government of India in the Ministry of Labour and Employment number S.O. 1062 dated the 15 March, 1990, the Central Government hereby appoints the following officers to exercise the functions of appellate authority under the said Act in respect of the industrial establishment under the control of Central Government or a Railways administration or a major port, mine or oil-field situated anywhere in India, namely:-

(1) Chief Labour Commissioner (Central): (2) Additional Chief Labour Commissioner (Central); (3) All Deputy Chief Labour Commissioner (Central). [No.S-12011/3/2014-IR(PL)] G. VENUGOPAL REDDY. Jt. Secy."

24. A perusal of the aforesaid provisions therefore clearly indicates the aspect that under Section 29 of the Act of 2013, it is only the Central Government which is empowered to frame Rules under the Act of 2013 and in terms thereof the Rules of 2013 have been framed clearly indicating the Appellate Authority in Rule 11 thereof.

25. It is quite clear that Rule 11 of the Rules of 2013 adverting to the Act of 1946 would therefore come within purview of the doctrine of legislation by reference. The aforesaid doctrine has been enunciated and explained by Hon'ble the Supreme Court in the cases of **Insolvency and Bankruptcy Board of India versus Satyanarayan Bankatlal Malu & Ors.** reported in **(2024)6 SCC 508 and Girnar Traders(3) versus State of Maharashtra & Ors.** reported in **(2011)3 SCC 1**. The relevant portion of which are as follows:-

"31.It could thus be seen that the effect of incorporation means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the

latter wholly untouched. However, in the case of a reference or a citation of the provisions of one enactment into another without incorporation, the amendment or repeal of the provisions of the said Act referred to in a subsequent Act will also bear the effect of the amendment or repeal of the said provisions.

87. However, since this aspect was argued by the learned counsel appearing for the parties at great length, we will proceed to discuss the merit or otherwise of this contention without prejudice to the above findings and as an alternative plea. These principles have been applied by the courts for a considerable period now. When there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference. In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act; but, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act. This principle is generally called legislation by incorporation. General reference, ordinarily, will imply exclusion of specific reference and this is precisely the fine line of distinction between these two doctrines. Both are referential legislations, one merely by way of reference and the other by incorporation. It, normally, will depend on the language used in the later law and other relevant considerations. While the principle of legislation by incorporation has well-defined exceptions, the law enunciated as of now provides for no exceptions to the principle of legislation by reference. Furthermore, despite strict application of doctrine of incorporation, it may still not operate in certain legislations and such legislation may fall within one of the stated exceptions."

26. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is thus evident that where provisions of another Act have been incorporated with legislation by reference, the provisions of the Act which is referred to, become an intrinsic part of the legislation to which it is sought to be referred. In such circumstances, the provisions of the Act of 1946 particularly with regard to Appellate Authorities would be become applicable upon persons aggrieved by recommendations made under the relevant clauses of Sections 13, 14, and 17 of the Act of 2013. Therefore, the aspect of whether a person aggrieved is a Central Government Employee or State Government Employee loses importance and it is this provision of appeal indicated under Act of 1946 which will prevail.

27. A perusal of various Sections of the Act of 2013 prima facie indicate certain contradiction with regard to Rules being framed by appropriate Government. However for the purposes of this particular dispute, Section 29 of the Act of 2013 clearly empowers only the Central Government to issue Rules in terms of the Act and therefore notification of the Rules by the Central Government in terms of Section 29 of the Act of 2013 will be equally applicable upon State Government Employee as well.

28. In such circumstances, it is held that any person aggrieved by recommendations made under relevant portions of Sections 13, 14 or 17 of the Act

of 2013 would have the remedy of appeal to the authorities indicated in terms of notification dated 04.05.2016, as amended from time to time in terms of the Act of 1946.

29. Preliminary objection with regard to availability of appeal therefore are upheld.

30. The next aspect which requires consideration is whether in such circumstances where appeal is maintainable against recommendations under provisions of Sections 13, 14 and 17 of the Act of 2013, the present petition would be entertain-able or is required to be relegated to the appellate jurisdiction.

31. Learned counsel for petitioner has specifically submitted that despite availability of remedy of appeal, the present petition would be maintainable since the recommendations and even the initiation of proceedings in terms of complaint are without jurisdiction.

32. The said aspect has already been settled in a catena of judgments particularly in case **of Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Ors.** reported in **(1998)8 SCC 1** in which it has already been held that notwithstanding any forum of appeal, a writ petition would be entertain-able in case orders under challenge are without jurisdiction or have been passed without adhering the principles of natural justice, amongst other aspects.

33. Learned counsel for petitioner to substantiate his submissions has indicated provisions of Section 2(n) of the Act of 2013 to submit that the term 'Sexual Harassment' indicates five aspects indicated in the said provisions. He has also adverted to Section 9 of the said Act of 2013 to submit that in terms thereof, the complaint to be entertain-able under the Act of 2013 is required to comply not only the provisions of Section 2(n) but also with regard to Section 9 of the Act of 2013 which prescribes a limitation period of three months from the date of incident or in case of a series incidents, within a period of 3 months from the date of last incident. It is therefore submitted that the complaint was made on 12.03.2025 but pertains to an incident which took place on 03.04.2024. It is submitted that since the complaint adverts to a single incident and not to a series of incidents, the complaint was not entertain-able after three months from the date of such incident. He has also adverted to the contents of complaint dated 12.03.2025 to submit that none of allegations made thereunder are referable to Section 2(n) of the Act of 2013. In view thereof, it is submitted that the very initiation of proceedings and recommendations thereafter are without jurisdiction.

34. He has also adverted to the fact that he never received any show cause notice nor was he provided an opportunity to participate in the proceedings which started and culminated in just one day on 01.08.2025 with statements of witnesses also being recorded on the same day with the inquiry report also being submitted on the same day itself. It is therefore submitted that no opportunity for providing defence to petitioner was ever given.

35. Learned State Counsel has been provided written instructions dated 01.08.2025, a copy of which is taken on record and as per which the recommendations dated 01.08.2025 have been brought on record. It is submitted by

learned State Counsel that a notice was given to petitioner vide letter no.1102 dated 28.07.2025 but was not availed of by the petitioner himself who refused either to submit a reply or to participate in the proceedings. He has placed reliance on judgment rendered in the case of **Vishwesh Dayal Shrivastava versus Union of India & Ors.** MANU/UP/2979/2015 reported in **2016(8) ADJ 597** to submit that it has been held that in case the complainant could not file the complaint within the prescribed time limit due to circumstances beyond her control, the complaint would be entertainable in such circumstances.

36. Prima facie, from submissions advanced by learned counsel for parties and perusal of material on record, it appears that the Local Committee in its report has not adverted to the aspect of complaint being beyond the limitation period as prescribed under Section 9 of Act of 2013. The aspect of whether the complaint would come within view of Section 2(n) of the Act of 2013 has also not been adverted to by Local Committee in its recommendations. Another aspect which will require consideration is whether the entire process of inquiry was completed within one day due to which ample opportunity of defence was not provided to petitioner.

37. In view of aforesaid facts and circumstances, opposite parties are granted three weeks? time to file a counter affidavit.

38. List this case on 10.10.2025 alongwith service report.

39. Till next date of listing, operation of impugned recommendations dated 01.08.2025 shall remain stayed.

(2025) 9 ILRA 785
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.09.2025

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE VINOD DIWAKAR, J.

Writ C No. 20190 of 2024

Ashok Kumar & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Abhijeet Mukherji, Rajesh Mishra

Counsel for the Respondents:
Jagannath Maurya, Rajeshwar Tripathi, Shiv Prakash Gupta

ISSUE FOR CONSIDERATION

Whether the petitioners, whose predecessors-in-interest sought enhanced compensation under Section 18 of the Land Acquisition Act, 1894, are estopped from invoking Section 24(2) of the Act, 2013 to contend that the acquisition has lapsed?

HEADNOTE

Land Acquisition Act, 1894 — Sections 4, 6, 17(1), 17(4), 31(2) — Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Sections 24(2), 101 — Deemed lapse of acquisition proceedings — Constructive res judicata — Estoppel — Delay & laches

Land in dispute was acquired for construction of residential and commercial buildings. Petitioners asserted that neither possession was taken nor compensation paid. Record showed that possession was taken on 24-05-2002 and compensation deposited in Court under Section 31(2) of the Act, 1894 on 13-12-2007. Substantial development work, including construction of roads and public infrastructure, was undertaken and more than 80% of tenure-

holders accepted compensation. ***Held:*** Petition barred by constructive res judicata. Petitioners' predecessors-in-interest had earlier challenged the same acquisition in Writ Petition No. 30346 of 2013, which was dismissed on 28-05-2013, and they had also preferred proceedings under Section 18 of the 1894 Act seeking enhancement of compensation, thereby acknowledging the validity of acquisition. Principle that no person should be twice vexed for the same cause and that there must be an end to litigation applies. Having sought enhanced compensation, petitioners are estopped from contending lapse under Section 24(2), no one being permitted to approbate and reprobate simultaneously. Acquisition does not lapse under Section 24(2) of the Act, 2013 when either possession has been taken or compensation has been paid. In the present case, both conditions stand satisfied. Mere continuation of petitioners' possession after symbolic possession, particularly where substantial development has occurred, does not negate lawful vesting. Section 24(2) does not revive or create a fresh cause of action where acquisition proceedings had already attained finality prior to 01-01-2014 and cannot be invoked to reopen settled matters after unreasonable delay. Relief claimed under Section 24(2) is untenable as the acquisition has been upheld by the Supreme Court in Civil Appeal Nos. 2944, 2945 and 2947 of 2013 and by this Court in Baij Nath & Others. Writ petition also barred by delay and laches. Challenge raised more than three decades after issuance of notification under Section 4 on 01-02-1990 and award dated 17-03-1992 is clearly stale. The Act, 2013 does not revive time-barred or concluded acquisitions. **[Paras 8.4,8.6,8.8,8.10] (E-5)**

CASE LAW CITED

Indore Development Authority v. Manoharlal, (2020) 8 SCC 129; Hari Ram v. State of Haryana, (2010) 3 SCC 621; Shyam Verma v. Land Acquisition Officer, 2024 SCC OnLine MP 1834; Pune Municipal Corporation v. Harakchand Misrimal Solanki, (2014) 3 SCC 183

List of Acts

Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Constitution of India

List of Keywords

Section 24(2) — Deemed lapse of acquisition proceedings — Constructive res judicata — Estoppel — Delay & laches — De-notification

CASE ARISING FROM

Appearances for Parties

Advs For Petitioner: Abhijeet Mukherji, Rajesh Mishra,

Advs For Respondents: C.S.C., Devesh Vikram, Fuzail Ahmad Ansari, Suresh Singh, M.C. Chaturvedi (Sr. Adv.) with J.N. Maurya & Shiv Prakash Gupta

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri Rajesh Mishra and Shri Abhijeet Mukherji, learned counsels for the petitioners, Shri Devesh Vikram and Shri Shuresh Singh, learned Additional Chief Standing Counsels and Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents and Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri J.N. Maurya and Shri Shiv Prakash Gupta, learned counsels for the respondent - Meerut Development Authority.

2. Since all the aforesaid writ petitions involve a common legal issue concerning the applicability of Section 24(2) and Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and with the consent of learned counsel for the parties, the petitions have been clubbed together, heard analogously, and are being disposed of by this common judgment.

3.1 The Writ-C No. 20190 of 2023 has been filed, praying inter alia seeking issue a

writ, order or direction in the nature of Mandamus commanding respondent Nos. 1 to 3 to return and re-convey the petitioners' land ad-measuring 0.2530 hectares, comprised in Khasra No. 708, situated at Village Abdullapur, Pargana and Tehsil Meerut, which was earlier sought to be acquired for the project of the Meerut Development Authority1, namely 'Ganga Nagar Awasiya Vyasayik Yojana', in terms of Section 48 of the Land Acquisition Act, 1894 and the corresponding Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 20132; and further, to de-notify the said land as the acquisition proceedings initiated through notifications dated 01.02.1990 under Section 4(1) and 07.03.1990 under Section 6 of the Land Acquisition Act, 18943 have lapsed under Section 24(2) of the Act of 2013; and in the alternative, to consider and decide the petitioners' representation dated 30.01.2018 (Annexure No. 11 to this writ petition) regarding reversion and return of the land, after affording them due opportunity of hearing, within a stipulated period of time.

3.2 Similarly, WRIT - C No. - 32858 of 2024 has been filed seeking a direction in the nature of Mandamus commanding respondent Nos. 1 to 3 to return and re-convey the petitioners' land ad-measuring 0.8760 hectares, comprised in Khasra No. 770, situated at Village Abdullapur, Pargana and Tehsil Meerut, which was earlier sought to be acquired for the project of the Meerut Development Authority, namely 'Ganga Nagar Awasiya Vyasayik Yojana', in terms of Section 48 of the Land Acquisition Act, 1894 and the corresponding Section 101 of the Act, 2013; and further, to de-notify the said land as the acquisition proceedings initiated through notifications dated 01.02.1990 under Section 4(1)/ 17(4) and 07.03.1990 under Section 6/ 17(1) of the Act, 1894 have lapsed under Section 24(2) of the Act of 2013; and in the alternative, to consider and decide the petitioners' claim for reversion and return of the land, in the same manner as was done for other tenure holders through Government notifications dated 29.12.2016 and 10.03.2017, after affording due opportunity of hearing, within a stipulated period of time.

3.3 Similarly, WRIT-C No.16299 of 2023 has been filed seeking a direction in the nature of Mandamus commanding respondent Nos. 1 to 3 to return and re-convey the petitioners' land admeasuring 5.703 hectares, comprised in Khasra Nos. 740, 749, 750, 801, 781, 763, 501 and 772, situated at Village Abdullapur, Pargana and Tehsil Meerut, which was earlier sought to be acquired for the project of the Meerut Development Authority, namely 'Ganga Nagar Awasiya Vyasayik Yojana', in terms of Section 48 of the Land Acquisition Act, 1894 and the corresponding Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and further, to de-notify the said land as the acquisition proceedings initiated through notifications dated 01.02.1990 under Section 4(1) and 07.03.1990 under Section 6 of the Act, 1894 have lapsed under Section 24(2) of the Act of 2013; and in the alternative, to consider and decide the petitioners' representation dated 30.01.2018 (Annexure No. 11 to this writ petition) regarding reversion and return of the land, after affording them due opportunity of hearing, within a stipulated period of time.

A. FACTUAL MATRIX:

4. The record reveals that, vide notification dated 27.01.1990 issued under

Sections 4(1) and 17(4) of the Act, 1894, the State Government of Uttar Pradesh proposed to acquire 246.931 acres of land situated in Village Abdullapur, Pargana, Tehsil and District Meerut. Thereafter, on 01.02.1990, a declaration under Sections 6 and 17(1) of the Act, 1894 was published in the Official Gazette. Subsequently, another notification under Section 6 of the Act, 1894, was issued on 07.03.1990, which was also published in two local newspapers on 10.03.1990.

4.1 Since the acquisition was stated to be of an urgent nature, the State invoked the provisions of Section 17(1) and Section 17(4) of the Act, 1894, thereby dispensing with the inquiry contemplated under Section 5-A of the Act, 1894. The acquisition was purportedly undertaken for the construction of residential and commercial buildings under a planned development scheme, namely 'Ganga Nagar Awasiya Vyasayik Yojana', to be executed by the MDA. Pursuant thereto, notices under Section 9 of the Act, 1894 were issued, in response to which certain tenure-holders submitted their objections.

4.2 On 17.03.1992, the Special Land Acquisition Officer passed an award. As the urgency clause under Section 17(1) had been invoked, possession of the land was taken in phases, i.e. on 18.06.1998 (31 acres), 12.04.1999 (11 acres), 24.05.2002 (200 acres), and 30.12.2010 (4.931 acres). The records indicate that the acquisition affected 223 tenure-holders, out of whom more than 80% (181 tenure-holders) accepted the compensation. However, certain tenure-holders (including petitioners′ predecessors-in-interest), being aggrieved with the quantum of compensation, preferred Land Acquisition References (LARs). In total, 84 LARs were filed.

4.3 The record further indicates that the MDA, by its resolution dated 17.09.1997, initially resolved to withdraw from the acquisition proceedings in respect of the land, except for an extent of 42.018 acres. However, by a subsequent resolution dated 15.03.2002, the MDA rescinded its earlier decision and resolved to proceed with the development of the entire acquired land of Ganga Nagar Colony, noting that substantial investments had already been made towards the construction of roads, sewerage, and other civic amenities.

4.4 Aggrieved by the revised proposal of the MDA dated 15.03.2002, four writ petitions came to be filed before this Court by the original tenure-holders, wherein, the sole relief sought was for a direction to the MDA to give effect to its earlier resolution dated 17.09.1997, which the State Government had declined. One such petition was Writ-C No. 7748 of 2002 (Bimal Chand Jain and others vs. State of U.P. and others). All the writ petitions were decided by a common judgment and order dated 02.12.2009, directing the respondent-MDA to act upon its resolution dated 17.09.1997. For ready reference, the judgment dated 02.12.2009 passed in Writ-C No. 7748 of 2002 (Bimal Chand Jain and others vs. State of U.P. and others) is reproduced hereinbelow:

"In this petition, the original owners are Bimal Chand Jain, Sudarshan Kumar Jain and Sudesh Kumar Jain, petitioners no.1 to 3 respectively and Vivek Jain and Smt. Asha Jain (petitioner nos.4/1 and 4/2 respectively), substituted after the death of original owner petitioner no.4 Subhash Kumar Jain. They have not

pressed other reliefs, except the relief seeking a writ of mandamus to command the Meerut Development Authority, respondent no.4 to press the resolution dated 14.5.02, which has been rejected by the Government. A perusal of the rejection order reveals that rejection is not based for other reasons, except that the land proposed to be released under Section 48 the Land Acquisition Act, has been thrust upon the development authority to sell it out so that its financial position is improved. This is no reason. The acquisition under the Land Acquisition Act is made for the public purpose if needed. No doubt the town plan development of the council is a public purpose done by the development authority but the development authority when itself says that it is not needed, then the condition of acquisition is not fulfilled as contained in the Land Acquisition Act. Therefore reason of rejection is not germane to the provisions of the Land Acquisition Act. The Development Authority is directed to press its resolution if the authority is not in need of the said land. The petition is accordingly disposed of."

4.5 Assailing the judgment and order dated 02.12.2009, three Civil Appeals, being Civil Appeal Nos. 2944 of 2013, 2945 of 2013, and 2947 of 2013 were preferred before the Hon'ble Supreme Court. By judgment dated 08.04.2013, the said appeals were dismissed. While doing so, the Supreme Court took note of the reliefs sought by the tenure-holders before the writ court, which are extracted herein below:

"i. Issue a writ, order or direction in the nature of mandamus commanding the respondent no.1 to accept the proposal for withdrawing from acquisition in view of the resolution dated 17.9.97 submitted by the Meerut Development Authority at the earliest within a period to be fixed by this Hon'ble Court.

ii. Issue a writ, order or direction in the nature of certiorari quashing the entire land acquisition proceedings in pursuance of the notification u/s 4 dated 27.1.1990 and declaration u/s 6 of the Act dated 7.3.90.

ii-a. Issue a writ, order or direction in the nature of certiorari quashing the order/decision communicated by letter dated 24.08.2002 (Annexure-16 to the writ petition).

iii. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to dispossess the petitioners from their respective lands forcibly in pursuance of the acquisition for declaration was issued u/s 6 of the Act on 6.3.90.

iv. Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the damages for financial loss, mental agony and pain to the petitioners in view of section 48(2) of the Act.

v. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

vi. Award cost of the writ petition to the petitioners."

4.6 The Supreme Court, while adjudicating the appeals, summarized the undisputed facts in paragraph 10 of its judgment dated 08.04.2013, which is reproduced herein below for ready reference:

"10. Some of the important facts which are not in dispute can be summarized as under:

(i) Notification under Section 4 and Declaration under Section 6 were issued for the acquisition of 246.931 acres of the land for the purpose of construction of residential/commercial building under the planned Development Scheme in the District of Meerut by the MDA;

(ii) Inquiry under Section 5A of the Act was dispensed with since provision of Section 17(1)&(4) was invoked;

(iii) In response to the notice under Section 9(1) of the Act, the appellant-land owners filed their objections, and finally, the award under Section 11 of the Act was passed on 17.3.1992 by the Special Land Acquisition Officer; and

(iv) As requested by the appellants and other land owners, reference under Section 18 of the Act was made on 22.9.1997.″

4.7 The Supreme Court, while dealing with the aforesaid category of cases, also took into consideration the counter affidavit filed by the MDA, wherein it was averred that the land in question had been acquired for the Ganga Nagar Housing Extension Scheme, keeping in view the acute need for housing accommodation and with a view to preventing unregulated and unplanned construction. It was further stated that notices under Section 9(1) of the Act, 1894, were issued, inviting objections, and upon completion of the prescribed procedure, an award came to be passed on 17.03.1992.

4.8 The Supreme Court also took note of the fact that, following the said award, a sum of Rs.5.32 crores, out of the total compensation amount of Rs.5.51 crores, was deposited with SLO. The appellants had preferred reference applications in the year 2002 for enhancement of compensation. It was further noted that possession of the acquired land was taken by the State Government and handed over to the MDA in the year 2002. Out of the total acquired land measuring 246 acres, approximately 125 acres had already been allotted for residential and institutional purposes as per the applicable Master Plan.

4.9 The MDA had also placed on record in the said proceeding that it had incurred an expenditure of approximately Rs.21 crores since 2002 toward development activities, including the construction of overhead water tanks, roads, sewage treatment plants, and other essential civic infrastructure. The earlier request for withdrawal of acquisition, as per the resolution dated 17.09.1997, had been rescinded by a fresh resolution dated 15.03.2002, whereby the MDA resolved to proceed with the development of the entire acquired land as Ganga Nagar Colony. The remaining land is also under development, with considerable investment made in the construction of roads, sewerage systems, and other civic amenities.

4.10 While examining the factual matrix of the case, the Supreme Court also addressed the core issue that arose for consideration, namely: whether merely on the basis of internal correspondence between the MDA and the State Government, and in light of the MDA′s resolution dated 17.09.1997 to seek withdrawal of acquisition subject to approval of the State Government, a writ of mandamus could be issued directing the State or the MDA to denotify or de-requisition the land that had already been acquired following due process of law and in respect of which an award had been passed by the Special Land Acquisition Officer. This issue was considered and answered by the Supreme Court in

paragraphs 16, 17, 18 and 19 of its judgment dated 08.04.2013.

4.11 The aforesaid three civil appeals were dismissed by the Supreme Court, holding that since the urgency clause had been invoked and the land had vested in the State free from all encumbrances, it could not be released subsequently. Meanwhile, the predecessors-in-interest of the petitioners challenged the acquisition proceedings by filing Writ-C No. 30346 of 2013 (Baij Nath and 80 others vs. State of U.P. and 2 others), primarily on the ground that possession of the acquired land had not been taken by the State Government or the MDA. The Division Bench of this Court, while considering the aforesaid contention, also took note of the judgment and order dated 08.04.2013 passed by the Supreme Court, and accordingly dismissed Writ-C No. 30346 of 2013 by its order dated 28.05.2013.

4.12 The record further reveals that the State Government had issued notifications dated 22.12.2016 and 10.03.2017, whereby certain plots were de-notified. Relying upon these notifications, all the aforesaid three writ petitions have been filed, seeking the relief as mentioned hereinabove.

C. SUBMISSIONS ON BEHALF OF PETITIONERS:

5. Shri Rajesh Mishra and Shri Abhijeet Mukherji, learned counsels for the petitioners vehemently submitted that the land acquisition proceedings initiated through notification dated 01.02.1990 under Section 4/ 17(4) and subsequent notification dated 07.03.1990 under Section 6 17(1) of the Act, 1894, have lapsed in view of the provisions contained in Section 24(2) of the Act, 2013. It has been argued that the essential preconditions under the said section, that physical possession must be taken and compensation must be paid, have not been met in the instant case even after a lapse of more than three decades from the date of notification.

5.1 It is contended that although an award was declared on 17.03.1992, no compensation was paid to the petitioners or their predecessors-in-interest, nor was any attempt made to deposit the same in their names. More importantly, the physical possession of the land in question was never taken over by the authorities. Learned counsels have referred to a series of letters exchanged between the MDA and other authorities, particularly the letters dated 21.05.1998, 31.08.1998, and 06.06.2000, which clearly record that the land in question was never taken into possession by the authority and that the acquisition was not being pursued for a substantial area measuring 204.912 acres. These facts have remained uncontested on record and, therefore, conclusively establish that the acquisition proceedings qua the land of the petitioners have lapsed by operation of law.

5.2 It is further submitted that the petitioners stand on the same legal and factual footing as the landowners whose lands have already been released by the State Government through notification dated 10.03.2017 and affirmed by the order dated 24.04.2017. The principle of parity and non-discrimination mandates that the petitioners be treated equally, especially when their Khasra numbers are adjacent to or similarly situated as those already de-notified. Learned counsels point out that several writ petitions, particularly Writ-C No.16299 of 2023, arising out of the same acquisition proceedings have been

entertained by this Court and status quo orders granted. Therefore, denial of similar relief to the petitioners would amount to hostile discrimination, arbitrariness and in violation of Article 14 of the Constitution.

5.3 It is also urged that the attempt of the MDA to now forcibly dispossess the petitioners, despite their continued possession and absence of compensation, is not only without the authority of law but also contrary to the spirit of the Act, 2013. The photographs filed with the petition, also demonstrate the continued possession and cultivation by the petitioners, and the complete absence of any development or governmental activity over the land in question. The learned counsel has also referred to the legal position that when possession is not taken, the State can withdraw from acquisition under Section 48 of the Act, 1894 now Section 101 of the Act, 2013 and the tenure holders would be entitled to restoration of land and compensation for damages.

5.4 Finally, it is submitted that the petitioners have a right to be heard and their land cannot be retained by the MDA and the acquisition proceedings would have lapsed by operation of law. The conduct of the development authority, in requesting compensation in 2007 without even identifying the relevant Khasras, and then suppressing its own failed representations before the State Government, is reflective of mala-fides. The petitioners are poor agriculturists with no other source of livelihood and cannot be subjected to arbitrary dispossession. Therefore, the learned counsels pray that the Court declare the acquisition to have lapsed in terms of Section 24(2) of the Act, 2013.

5.5 In support of their submissions, learned counsels for the petitioners have placed heavy reliance on the judgment of Supreme Court passed in **Hari Ram & Anr vs State Of Haryana & Ors** stating that similarly situated land owners should not be discriminated as it is grossly against the constitutional theme enshrined under Article 14 of the Constitution of India. Secondly, he has placed reliance on the judgment passed by the Supreme Court in the case of **Shyam Verma versus Land Aquisition Officer** holding that the urgency clause shouldn't be ordinary invoked as it would tantamount to misuse of the provision, moreover if the acquisition proceedings couldn't be concluded at the earliest it should be deemed as lapsed.

D. SUBMISSIONS ON BEHALF OF RESPONDENT - MERRUT DEVELOPMENT AUTHORITY (MDA):

6. Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri J.N. Maurya and Shri Shiv Prakash Gupta, learned counsel for the respondent - MDA submits that these writ petitions are the second one filed on the same cause of action, as a previous writ petition (Writ-C No.30346 of 2013) filed by the petitioners' predecessors-in-interest and others challenging the same acquisition was dismissed by this Court on 28.05.2013, and the same was upheld by the Supreme Court in Civil Appeal Nos. 2944, 2945 and 2947, all of 2013. The acquisition of the said land was undertaken under notifications dated 27.01.1990 and 07.03.1990, followed by an award dated 17.03.1992, with possession taken on various dates, and compensation deposited in the court on 13.12.2007 under Section 31(2) of the 1894 Act. Numerous litigations related to the same acquisition have been decided against the tenure

holders by both the High Court and the Supreme Court. Furthermore, more than 80% of affected tenure holders accepted compensation, and MDA′s name was duly mutated in revenue records. Substantial development has taken place on the land in question, including construction of roads (18m and 36m), drainage, sewage, and electricity infrastructure.

6.1 Learned Senior Counsel further submits that the petitioners′ predecessors-in-interest had also filed Land Acquisition Reference (LARs) Application solely for enhancement of compensation, not for return of land. The MDA Board′s earlier resolution (dated 17.09.1997) to withdraw from part of the acquisition was later rescinded by resolution dated 15.03.2002, and multiple petitions challenging this were dismissed by the Supreme Court. The petitioners' reliance on government de-notification orders dated 22.12.2016 and 10.03.2017 is misplaced in light of the Constitution Bench ruling in **Indore Development Authority vs. Manoharlal and others**, which clarified that acquisition does not lapse if either compensation has been paid or possession taken. Whereas in this case, both have occurred. Learned Senior Advocate submits that the petitions are barred by principles of res judicata and delay, lack merit under the amended interpretation of Section 24(2), and should be dismissed accordingly.

E. SUBMISSIONS ON BEHALF OF STATE RESPONDENTS:

7. Shri Devesh Vikram and Shri Suresh Singh, learned Additional Chief Standing Counsels and Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents submit that the acquisition proceedings were completed in accordance with law and cannot be deemed to have lapsed under Section 24(2) of the Act, 2013. The chronological sequence of events establishes beyond doubt that the Award was duly passed on 17.3.1992 by the competent authority, physical possession of the land in question was handed over to the Authority on 24.5.2002, and the compensation amount for affected tenure holders who had not received compensation was deposited with the Court through letter no. 1451 dated 13.12.2007, alongwith treasury cheque no. 58194 dated 7.12.2017 for Rs. 2,46,05,733/- under Section 31(2) of the Act, 1894. It is further submitted that the majority of the tenure holders had already received their compensation, and for those who had not received the same on account of their pressing LARs, proper notices were issued and the compensation amount was duly deposited with the Court in accordance with the provisions of law.

7.1 The learned Additional Chief Standing Counsels emphasizes that the petitioners' reliance on earlier de-notifications dated 22.12.2016 and 10.3.2017 is fundamentally flawed due to subsequent judicial developments. These de-notifications were issued based on the then prevailing interpretation of Section 24(2) of the Act, 2013 as laid down in **Pune Municipal Corporation vs. Harak Chand Misrimal Solanki**. However, this interpretation has been categorically overruled by a Constitution Bench of Five Judges of the Supreme Court in **Indore Development Authority (supra)**. In the Indore Development Authority case, the Supreme Court specifically observed that "the decision rendered in **Pune Municipal Corporation (supra)** is hereby overruled and all other decisions in which Pune Municipal Corporation has been followed,

are also overruled. This judicial development completely changes the legal landscape and renders the petitioners' contentions untenable.

7.2 The learned Additional Chief Standing Counsels further submits that Section 24(2) of the Act, 2013 provides that "in case the possession has been taken but the compensation has not been paid before the commencement of the Act, 2013, the proceedings shall be deemed to be lapsed." However, this provision is not applicable to the facts and circumstances of the present case. The acquisition proceedings in the present case were completed much before the commencement of the Act, 2013. The Award was passed on 17.3.1992, possession was taken on 24.5.2002, and compensation was paid to the majority of affected persons. For those who had not received compensation, the same was deposited with the Court under Section 31(2) of the Act, 1894, after due notices. Following the Supreme Court's decision in **Indore Development Authority (supra)**, the interpretation of Section 24(2) of the Act, 2023 has been clarified, and it cannot be said that land acquisition proceedings in respect of the petitioners shall be deemed to have lapsed merely because some compensation amount were deposited with the Court rather than being directly paid to individual tenure holders, moreover, keeping in view that proceedings under the LARs were preferred by some tenure holders and the predecessors-in-interest of the petitioners which are pending adjudication.

7.3 It is further submitted that the office order dated 24.4.2017 (Annexure no. 8 to writ petition) passed by the then Additional Chief Secretary, Housing & Urban Planning, Government of U.P., while rejecting the review application dated 28.03.2017 submitted by the MDA for the review of earlier de-notification dated 10.03.2017, was in consonance to the case of Sitaram vs. State of Haryana passed by the Supreme Court in SLP no. 534 and Civil Appeal no. 5811 of 2015 (Delhi Development Authority vs. Sukhbir Singh). In both these cases, reference was made to the case decided by the Supreme Court in **Pune Municipal Corporation (supra)**. However, they reiterated that the view taken in the Pune Municipal Corporation case has been overruled in the case of **Indore Development Authority (supra)**.

7.4 It is further emphasized that the present case is entirely distinguishable from those cases where lands were de-notified. The circumstances that led to the issuance of de-notifications dated 22.12.2016 and 10.3.2017 were based on the then-prevailing legal interpretation under Pune Municipal Corporation case (supra), which has since been overruled. The petitioners cannot claim similar treatment when the factual and legal matrix is entirely different. The key distinguishing factors include the fact that the Award was duly passed on 17.3.1992 and the physical possession was handed over to the authority on 24.05.2002, majority of tenure holders received compensation, remaining compensation was deposited with the Court under proper legal provisions, and the acquisition process was completed in its entirety. Moreover, the Supreme Court already approved the acquisition. Therefore, it is wrong to state that the circumstances which led to issuing of de-notifications on 22.12.2016 and 10.3.2017 are similar to that of the present case.

7.5 It is also argued that as far as the compensation is concerned, the learned

counsel has provided comprehensive information to the same which adequately demonstrates the completeness of the acquisition process. The MDA initially deposited a sum of Rs.5,32,00,000/- through cheque bearing no.J088699 dated 5.3.1992 issued by Allahabad Bank and intimated by letter no. 98 dated 5.3.1992 of the Vice Chairman of the Authority. Additionally, Rs.19,24,118.02 (out of total Rs.32,73,152.08) was deposited through cheque no. 279455 dated 24.10.2001 of Allahabad Bank, deposited on 2.11.2001. It is clarified that this cheque amount included compensation for three Yojanas, including Rs.19,24,118.02 for Ganga Nagar Yojana. The remaining compensation amount was deposited with the Court vide letter no. 1451 dated 13.12.2007, ensuring that all affected parties had access to their rightful compensation. These deposits demonstrate that the acquisition process was completed with due regard to the rights of all affected tenure holders.

7.6 In order to provide complete transparency the authority has brought on record certain administrative decisions too. The decision to release 204.312 acres of land, which was taken in the meeting of the MDA Board on 30.03.1998, was subsequently cancelled in the meeting of the MDA Board on 15.3.2002. This demonstrates the Authority's commitment to retaining the acquired land for its intended public purpose and shows that all administrative actions were taken with proper deliberation and in accordance with the Authority's mandate.

7.7 The petitioners' allegations of discrimination and violation of Articles 14 and 21 of the Constitution of India are completely unfounded. The learned counsel submits that there has been no discriminatory treatment, and all procedures have been followed in accordance with law. The fact that some other lands were de-notified does not create any legal right for the petitioners to claim similar treatment when the factual circumstances are entirely different. The State Government has not adopted any "pick-and-choose policy" as alleged by the petitioners. It is settled preposition of law that each case must be decided on its own merits and factual matrix, and the present case clearly establishes that the acquisition was completed in accordance with law much before the commencement of the Act, 2013.

7.8 The learned Additional Chief Standing Counsels further submits that the present writ petition suffers from the fatal defect of delay and laches. The petition has been filed after a lapse of approximately 11 years from the date of enforcement of the Act, 2013 (i.e., 1.1.2014). Furthermore, it is relevant to note that an earlier Writ-C No. 30346 of 2013 was dismissed on 25.08.2013, wherein petitioners′ predecessors-in-interest were parties. More significantly, petitioners′ predecessors-in-interest had preferred Land Acquisition References (LARs) for higher compensation under Section 18 of the Land Acquisition Act, 1894. Having participated in the acquisition proceedings and sought enhanced compensation, therefore it is not open to the the petitioners to now claim that the acquisition proceedings had lapsed under Section 24(2) of the Act, 2013. This amounts to taking contradictory stands and seeking to approbate and reprobate simultaneously, which is not permissible in law.

7.9 Lastly, it is submitted by learned Additional Chief Standing Counsels that

the acquisition proceedings were completed in accordance with law, and there is no question of the same having lapsed under Section 24(2) of the Act, 2013 or they are entitled for any relief under Section 101 of the act, 2013. The interpretation of Section 24(2) as laid down by the Supreme Court in **Indore Development Authority (supra)** is directly applicable to the facts and circumstances of the present case. The petitioners cannot claim benefit of de-notifications issued in other cases where the factual matrix was entirely different. The petition suffers from delay, laches, and contradictory stands taken by the petitioners' predecessor, and there is no violation of Articles 14 and 21 of the Constitution of India. They submit that in view of the legal precedents, and settled position of law, all the aforementioned writ petitions are liable to be dismissed in the interest of justice.

F. DISCUSSION AND FINDINGS:

8. We have thoroughly considered the pleadings, rival submissions, and documentary material placed on record. The principal prayer of the petitioners seeking a declaration that the acquisition in respect of disputed land situated in Village Abdullapur, District Meerut, stands lapsed under Section 24(2) of the Act, 2013, is based on the twin assertions that neither compensation has been paid to the petitioners nor physical possession of the subject land has been taken by the acquiring body and the land may be de-notified from the acquisition under Section 101 of the Act, 2013.

8.1 The Supreme Court, while considering the aforementioned Civil Appeal Nos. 2944, 2945, and 2947 of 2013, vide its judgment dated 08.04.2013, summarized the factual matrix of the case. Notifications under Section 4/ 17(4) of the Act, 1894, and declaration under Section 6/ 17(1) of the Act, 1894 were issued for the construction of residential and commercial buildings under the planned development scheme in Meerut by the MDA. The total land involved was 246.93 acres. Admittedly, the urgency clauses under Sections 17(1) and 17(4) were invoked, and the inquiry under Section 5-A of the Act, 1894, was dispensed with. It was also an admitted position that notices under Section 9(1) of the Act had been issued to the landowners, some of whom filed objections, and finally, an award was prepared under Section 11 of the Act, 1894, on 17.03.1992 by the Special Land Acquisition Officer. The petitioners' predecessors-in-interest in the said proceedings, along with other landowners aggrieved by the quantum of compensation, preferred LARs under Section 18 of the Act, 1894, on 22.09.1997, which are stated to be pending. The acquisition proceeding, which were travelled upto the Supreme Court in which the Hon'ble Supreme Court framed the core issue and answered the same in paragraphs 16, 17, 18, and 19 of its order dated 08.04.2013, which are reproduced herein below for ready reference:

"16. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in the case of ***Govt. of A.P. and Anr. vs. V. Syed Akbar AIR 2005 SC 492*** *held that :*

"It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. v. M. Bhaskaran Pillai & Anr. (1997) 5 SCC 432 para 4 of the said judgment reads: (SCC p. 433)

"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

17. In the case of ***Satendra Prasad Jain & Ors. vs. State of U.P. and Ors.****, AIR 1993 SC 2517, a 3-Judge Bench of this Court after considering various provisions including Section 17 of the Act observed as under:*

"14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in

the said Act by which land statutorily vested in the Government can revert to the owner."

18. Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law.

19. For the reasons aforesaid, there is no merit in these appeals which are accordingly dismissed."

8.2 The Supreme Court dismissed the aforesaid three civil appeals, holding that once the urgency clause was invoked and the possession were taken, thereafter, the land vested in the State free from all encumbrances, it could not be released. Meanwhile, the petitioners' predecessors again challenged the acquisition in Writ-C No. 30346 of 2013 (Baij Nath & 80 others vs. State of U.P. & others) on the ground that possession had not been taken. The Division Bench, considering the Supreme Court's judgment dated 08.04.2013, dismissed the writ petition on 28.05.2013. For ready reference, the order dated 28.05.2013 has been reproduced hereinbelow:

"Heard learned counsel for the petitioners and learned counsel appearing for the Meerut Development Authority.

Petitioners claim to be owners of different plots of land which were notified for the purposes of acquisition under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in the year 1990. The acquisition was for the purposes of a residential/commercial complex under the planned development scheme by the Meerut Development Authority and the provisions of Section 17(1) and (4) of the Act were also invoked. The award was made on 17th March, 1992 in respect of approximately 246.93 acres of land situated at village Abdullapur, Pargana and Tehsil and District Meerut.

The petitioners claim that possession of the acquired land has not been taken by the State or the Meerut Development Authority and, therefore, the delay is immaterial for challenging the acquisition proceeding indicated above. According to learned counsel for the petitioners, it was a case of misuse of powers under Section 17 of the Act and the State Government erred in not releasing the land of the petitioners in the year 2002 when the Meerut Development Authority had itself indicated in its resolution dated 17th September, 1997 that it was in a poor financial health and was unable to utilize the land.

Lot of developments appear to have taken place in the matter since 2002. Learned counsel for the Meerut Development Authority has placed before us copy of judgment of the Apex Court dated 8th April, 2013 passed in Civil Appeal No.2944 of 2013 and three other related Civil Appeals. That judgment shows that the Apex Court considered the latest factual position disclosed by the Meerut Development Authority with respect to the same very scheme for which approximately 246 acres of land was acquired. ***In that case, the appellants before the Apex Court wanted the land to be released from acquisition and this Court had passed an***

order dated 2nd December, 2009 extracted in paragraph-7 of the judgment of the Apex Court disposing of the writ petitions only with a direction to the Meerut Development Authority to press its resolution dated 17th September, 1997 if the Authority was not in need of the said land. The Apex Court considered the defence of the Meerut Development Authority that possession of the land so acquired was taken by the State and delivered to Meerut Development Authority in 2002. Further stand taken by the Meerut Development Authority was that out of the 246 acres of land, approximately 125 acres of land has already been allotted for residential and institutional use as per the Master Plan and that it had already spent Rs.21 crores for development since 2002 which included construction of overhead tanks, roads, sewage treatment plant etc. Meerut Development Authority further disclosed to the Apex Court that it had withdrawn its earlier resolution of 1997 through a fresh resolution on 15th March, 2002 for development of the entire acquired land as Ganga Nagar Colony.

The Apex Court considered the issue whether, in the facts of the case, a mandamus could be issued directing the State or the Meerut Development Authority to withdraw from the acquisition of the land which was acquired after following the due process of law and an award to that effect had been made by the Special Land Acquisition Officer. The Apex Court then after taking note of some precedents for the proposition that once the land is acquired and mandatory requirements are complied with including taking of possession, the land vests in the State Government free from all encumbrances observed that even if some land remains un-utilised, it cannot re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Act and in the concluding part of the judgment, in paragraph-18, the Apex Court recorded as follows:-

"Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law."

No doubt the prayer and issues raised before us through the present writ petition are different but in the light of findings given by the Apex Court that the land was acquired by the State for the purposes of expansion of city and that major portion of the land has already been utilized by the Authority and considering that this writ petition has been preferred in 2013 after a considerable delay of about 23 years without any satisfactory explanation, we are not persuaded to interfere with the land acquisition proceeding.

The writ petition is, therefore, dismissed.″

(Emphasis supplied)

8.3 At the outset, the court notes that the very foundation of the petition rests upon a disputed factual matrix. While the petitioners assert that possession of the land was never taken and no compensation was

paid, the respondents, both the State and the MDA, have placed on record specific details showing that the possession was in fact taken on 24.05.2002 and compensation was deposited in Court under Section 31(2) of the Act, 1894, on 13.12.2007. Moreover, the respondents have categorically stated that the development work pursuant to the acquisition had already been carried out, including construction of roads and public infrastructure on the land in question. The MDA′s layout plan clearly indicates that a portion of disputed land has been earmarked for a road and a community centre. These assertions are corroborated by revenue entries reflecting mutation of MDA's name, and by the fact that more than 80% of affected tenure holders have accepted compensation under the same acquisition proceedings.

8.4 The Court further finds that the petition suffers from the vice of Constructive res judicata. The petitioners′ predecessors-in-interest, were parties in Writ Petition No.30346 of 2013, who had challenged the very same acquisition proceedings on broadly identical grounds. That writ petition was dismissed by this Court on 28.05.2013. Significantly, the said petitioners had also pursued proceedings under Section 18 of the 1894 Act through Land Acquisition References, seeking enhancement of compensation, thereby evidencing acknowledgement of the acquisition.

8.5 For proper appreciation of facts its worthy to examine the concept of res judicata and constructive res judicata. The phrase *'Nemo Debet Lis Vexari Pro Una Et Eadem Causa′ and 'Reipublicae Ut Sit Finis Litium′* roughly translates as 'no one should be twice vexed for the same cause′ and 'it is in the interest of the state that there be an end to litigation′. Lucidly an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legislative purview of the original action both in respect of the matters of claim or defence. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The words 'might' and 'ought' have wide amplitude. The word 'might' conveys the idea of possibility of joining all grounds of attack or defence 'ought' carries the idea of propriety of so joining. An alternative basis on which a claim can be sustained should be set up in any suit to enforce the claim. When it is not set up, the basis omitted in the prior vexation should not be allowed to subsequently agitated. A similar view was taken by the Apex Court in the case **of K. Arumuga Velaiah Vs. P.R. Ramasamy and Ors. 2022 INSC 103** wherein the court while denouncing the practice of surfacing new grounds and facts when previous litigation has concluded, held:

"30. In this context, following judgments could be cited with regard to the operation of the principles of res judicata in respect to the previous proceeding and judgment:

a) In Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy (MANU/SC/0420/1970 : AIR 1971 SC 2355), it was observed as under:

10. It is true that in determining the application of the Rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier

judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the Rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the Rule of res judicata, for a Rule of procedure cannot supersede the law of the land.

b) In Mohanlal Goenka v. Benoy Kishna Mukherjee (MANU/SC/0008/1952 : AIR 1953 SC 65), the second round of litigation was admittedly in respect of same property and between the same parties, after the earlier litigation had attained finality even up to the stage of execution. It was held that later on the judgment debtor was precluded from raising the plea of jurisdiction in view of principles of constructive res judicata. In Paragraph 23 it was as under:

23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata.

c) In State of West Bengal v. Hemant Kumar Bhattacharjee (MANU/SC/0161/1962 : AIR 1966 SC 1061), the main issue related to the Special Court to try a Criminal offence, in as much as an incorrect decision cannot be equated with a decision rendered without jurisdiction. Even a wrong decision can be superseded only through appeals to higher tribunals or Courts or through review, if provided by law.

31. We accordingly hold that the High Court was justified in affirming the judgments of the First Appellate Court as well as the Trial Court dismissing the suit filed by the Appellant herein. We have no reason to interfere with the impugned judgment.″

8.6 Furthermore, as held by the Supreme Court in **Indore Development Authority (supra)**, where land owners seek reference under Section 18 for enhancement of compensation, they cannot turn around and contend that acquisition has lapsed under Section 24(2). Nobody is permitted to approbate and reprobate at the same time. Hence, the present petition is barred both on grounds of constructive res judicata and on the petitioners′ own conduct and selection of remedy.

8.7 Insofar as the petitioners' reliance on the provisions of Section 24(2) of the 2013 Act is concerned, their interpretation is unsustainable in light of the binding precedent laid down in **Indore Development Authority (supra)**, in paragraph 366 of which the Constitution Bench of this Court observed as under:

"366. In view of the aforesaid discussion, we answer the questions as under:1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned

authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

8.8 The Constitution Bench in Indore **Development Authority (supra)**, has decisively ruled that acquisition shall not be deemed to have lapsed if either of the two conditions, namely, payment of compensation or taking of possession, is fulfilled. In the present case, both conditions stand satisfied. Compensation was deposited in court as per Section 31(2), and possession was demonstrably taken as per the panchnama and official records. The mere continuation of petitioners' possession after symbolic or paper possession is taken, especially where substantial development has occurred, cannot be a basis to claim that possession was not taken under law. The Supreme Court has also clarified that Section 24(2) does not revive or create a fresh cause of action for landowners whose acquisition proceedings had attained finality prior to 01.01.2014, and that the provision cannot be used as a tool to reopen settled acquisitions or challenge state action long after reasonable periods have elapsed.

8.9 We find that once the land is acquired and the mandatory requirements are complied with, including possession having been taken, the land vests in the State Government free from all encumbrances. A categorical finding has also been recorded that even if some land remains unutilized, it would not be reconveyed or reassigned to the erstwhile owner by invoking the provisions of the Act, 1894, in view of the settled law laid down in **Government of A.P. & Another vs. Syed Akbar**. The Supreme Court has also considered Sections 17(1) and 17(4) of the Act, 1894. Once the urgency clause has been invoked, the land vests absolutely in the Government free from all encumbrances, and where possession has been taken under Section 9, even the Government cannot withdraw from the acquisition, including under Section 48 of the Act, 1894. The categorical finding was returned by the Supreme Court relying on its judgment in **Satendra Prasad Jain vs. State of U.P.** The Supreme Court, while considering the same acquisition in its judgment dated 08.05.2013 in Civil Appeal Nos.2944, 2945, and 2947 of 2013, also considered the plea of the tenure-holders that if any land acquired by the MDA remained unutilized and the MDA proposed to the Government to release such land in favour of the landowners, such a plea could not be sustained. This is because possession had already been taken, and the land had vested in the State free from all encumbrances. Accordingly, the plea of the tenure-holders (predecessors-in-interest of the petitioners) was rejected, and the alleged resolution of the MDA was held to be absolutely unwarranted in law. In the instant matter, we find that some tenure-holders who had not accepted compensation had preferred LARs, being aggrieved by the quantum of compensation.

Therefore, it cannot be presumed that they were against the acquisition; rather, they were dissatisfied with the adequacy of the compensation and sought to claim higher compensation through the LARs. At this stage, the relief sought in the instant proceedings that the acquisition proceedings would lapse under Section 24(2) of the Act, 2013, is unsustainable, as the acquisition in question had already been upheld in the aforementioned civil appeals by the Supreme Court and the similar challenge of acquisition had also been rejected by the Division Bench in Writ Petition No.30346 of 2013 (Baij Nath and 80 others vs. State of U.P. and others) and the relief for de-notification was also rejected, and the categorical findings were returned that the possession was taken as per law. By no stretch of imagination can it be presumed that once the acquisition was approved by the Supreme Court, the State Government would thereafter have any discretion to de-notify the land which is already acquired and vested in the State free from all encumbrances.

8.10 This Court also finds that the petition is hopelessly barred by delay and laches. The acquisition proceedings commenced with the notification under Section 4 of the 1894 Act on 01.02.1990, followed by declaration under Section 6 on 07.03.1990, and culminated in the award dated 17.03.1992. The petitioners′ claim raised more than 30 years later, is clearly stale. As repeatedly held by the Supreme Court, including in **Aflatoon v. Lt. Governor of Delhi,** and **Swaika Properties Pvt. Ltd. v. State of U.P.**, delay and laches disentitle a petitioner from equitable relief under Article 226 of the Constitution of India. No satisfactory explanation has been offered by the petitioners for approaching the Court after such an inordinate delay. The plea that the cause of action arose upon enactment of the 2013 Act is without merit, as that provision cannot be stretched to invalidate acquisitions concluded two decades prior.

8.11 Another argument based on parity with other de-notified Khasra numbers is also untenable. The respondents have clarified that the de-notifications carried out in 2016 and 2017 were based on administrative decisions taken under the legal position as it then stood, primarily relying upon the interpretation of **Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra)**. However, that decision was subsequently overruled by the Constitution Bench in **Indore Development Authority (supra)**. The principle of equality under Article 14 cannot be invoked to claim relief in derogation of law. In **Union of India v. M.K. Sarkar**, the Supreme Court cautioned that Article 14 is a positive right and cannot be used to perpetuate illegality or irregularity. Moreover, the petitioners′ land forms part of a different administrative and legal context, particularly as it has already been built upon. In addition, the earlier decision to drop acquisition was subsequently rescinded through MDA Board Resolution dated 15.03.2002.

8.12 The Supreme Court, in **M/s Delhi Airtech Services Pvt. Ltd. and another vs. State of U.P. and another** cited by the petitioners, which considered the judgment passed in **Satendra Prasad Jain (supra)** and held that the acquiring authority and/or the beneficiary cannot derive any benefit from non-compliance with the requirements of Section 17(3A) and take advantage of Section 11A of the Act, 1894. The benefit of these provisions is meant for the land loser. In Satendra Prasad Jain

(supra) also, the Supreme Court was of the view that it was not open to the acquiring authority or the beneficiary to invoke Section 11A or Section 17(3A), which are intended to protect the interests of the landowner, in order to avoid making an award within the prescribed time. It was further clarified that Satendra Prasad Jain (supra) does not lay down the ratio that an acquisition can never lapse under any circumstance if the urgency provision under Section 17 of the Act, 1894 is invoked; rather, it only disapproved applying such provisions against the land loser. In the instant matter, it is an admitted fact that the urgency clause was invoked, notice under Section 9 of the Act was issued, objections were filed, and thereafter the award was made. The awarded compensation was duly deposited, but some of the tenure-holders did not accept the same. Various Land Acquisition References (LARs) were made, and it is also on record that the award was made well within time and several tenure-holders preferred LARs. In these circumstances, the judgment in M/s Delhi Airtech Services Pvt. Ltd. (supra) cited by the petitioners is fundamentally distinguishable from the instant case and provides no help to the petitioners for several critical reasons relating to compliance with statutory requirements, factual circumstances, and the nature of possession taken.

8.13 In the M/s Delhi Airtech Services Pvt. Ltd. (supra), the Supreme Court specifically held that the rigour of Section 11A of the Land Acquisition Act, 1894 would apply to render acquisition proceedings lapsed only where the acquiring authority had failed to comply with the mandatory requirement under Section 17(3A) of tendering and paying eighty per cent of the estimated compensation before taking possession, thereby making such possession illegal and preventing absolute vesting of the land in the government. However, in the instant case involving the Ganga Nagar Housing Extension Scheme, the factual matrix reveals that possession of the acquired 246.931 acres was lawfully taken in phases between 1998 and 2010 following due process, including compliance with the urgency provisions under Section 17(1) and (4), and crucially, the Supreme Court in Civil Appeal Nos. 2944, 2945 and 2947, all of 2013 had already examined this very acquisition and categorically held that "the land was acquired by the State for the purposes of expansion of city and that major portion of the land has already been utilized by the Authority," thereby confirming that proper possession had been taken and the land had vested absolutely in the State Government free from all encumbrances.

8.14 Furthermore, the Supreme Court in judgment of the aforesaid Civil Appeal Nos. 2944, 2945 and 2947, all of 2013 emphasized and considered that where land has been utilized and developed by the beneficiary with substantial investments - as evidenced in the instant case, where the MDA had spent approximately Rs. 21 crores on development activities including roads, sewerage, overhead water tanks, and other civic amenities, and had already allotted 125 acres for residential and institutional purposes - the acquisition cannot be set aside merely on technical grounds. The Supreme Court's specific finding in the instant case that possession was legally taken, substantial development had occurred, and the acquisition served the public purpose of planned urban development directly negates any argument that the Delhi Airtech precedent could

apply, as that case dealt with illegal possession without compliance with Section 17(3A), whereas here all statutory requirements were fulfilled and the acquisition had attained finality through judicial scrutiny, making the ratio of Delhi Airtech (supra) entirely inapplicable to the petitioners' claims for de-notification.

8.15 Learned counsel for the petitioners has placed heavy reliance on the judgments of the Supreme Court in **Hari Ram & Another vs. State of Haryana & Others (supra),** and **Shyam Verma vs. Land Acquisition Office (supra)**. However, both decisions are also of no assistance to the petitioners, as they are clearly distinguishable on facts from the present case.

8.16 In light of the above discussion, this Court holds that:

(i) The acquisition of the land in question was lawfully undertaken and concluded under the Act, 1894, and possession was duly taken in accordance with law, which has been approved by the Supreme Court in Civil Appeal Nos.2944 of 2013, 2945 of 2013, and 2947 of 2013, as well as by the Division Bench of this Court in ***Baij Nath and 80 others (supra)****.*

(ii) The petitioners' predecessors-in-interest participated in the acquisition by filing proceedings for enhanced compensation under Section 18 of the Act, 1894, thereby acknowledging the validity of acquisition.

(iii) The writ petition is barred by constructive res judicata along with delay/laches.

(iv) Section 24(2) of the 2013 Act does not apply to revive or nullify such concluded acquisition proceedings, which have already been upheld by the Supreme Court.

(v) No case of parity or discrimination is made out, as the legal foundation of the earlier de-notification decisions no longer holds good after the judgment in ***Indore Development Authority (supra)****.*

G. CONCLUSION:

9. In conclusion, the present writ petitions are found to be legally unsustainable, barred by principles of finality, delay, and judicial discipline. Thus, the petitions lack merit and deserve to be dismissed.

9.1 Accordingly, all the above-noted writ petitions stand **dismissed**. No order as to costs.

(2025) 9 ILRA 806
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 21174 of 2025

Veerpal ...Petitioner
Versus
Prabhat Tomar & Ors. ...Respondents

Counsel for the Petitioner:
Abhijeet Mishra, Nipun Singh

Counsel for the Respondents:
Ashish Kumar Singh, Birendra Kumar

ISSUE FOR CONSIDERATION

A. Whether an election petition presented through virtual mode during the COVID-19 pandemic, with the petitioner present before the Court by video-conferencing, amounts to

sufficient compliance of the mandatory requirement under Rule 4(3) of the Uttar Pradesh Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994, requiring presentation of the petition in person?

B. Whether an election petition can be rejected in part under Order VII Rule 11 CPC when it discloses a cause of action on at least one independent ground?

HEADNOTE

U.P. Kshettra Panchayat & Zila Panchayat Act, 1961 — Section 27; U.P. Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994 — Rule 4(3) — Mandatory requirement of personal presentation — Virtual presence during COVID-19 restrictions — Substantial compliance — Order VII Rule 11 CPC — Election petition cannot be rejected in part — Sufficient cause of action pleaded regarding recount

Held: Election petition was filed through both modes i.e. physical filing and e-filing. Although at the time of physical presentation the election petitioner was not present, the petition filed virtually was presented by the election petitioner himself from his own e-mail ID and, while entertaining the e-petition, the District Judge recorded the virtual presence of the petitioner. Therefore, there was sufficient compliance of sub-Rule 3 of Rule 4 of the Rules, 1994, and it cannot be said that the petition was not presented personally. It will not result in dismissal of the petition for non-compliance of sub-Rule 3 of Rule 4 of the Rules, 1994, as the petitioner was virtually present before the Court at the time of presentation of the petition filed through e-mode.

The election petition was filed mainly on two grounds—(i) improper counting by the authorities, and (ii) recounting being conducted behind the back of the election petitioner pursuant to an application moved by the returned candidate, as a result whereof he was declared elected. Even assuming that particulars regarding the first ground were lacking, the election petition was maintainable on the other ground i.e. illegal recounting, for which sufficient pleadings were made by the election petitioner. If the petition is based on two distinct grounds and even if one ground is held to be deficient, the election petition cannot be rejected, as rejection under Order VII Rule 11 CPC must be of the election petition as a whole and not in part. Thus, the application under Order VII Rule 11 CPC was rightly rejected. **[Paras 20, 23]** (E-5)

CASE LAW CITED

Devendra Yadav v. District Election Officer/District Magistrate, Mau, 2011 (9) ADJ 219

Kum. Geetha v. Nanjundaswamy, Civil Appeal No. 7413 of 2023

Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780

List of Acts

U.P. Kshettra Panchayat & Zila Panchayat Act, 1961;

U.P. Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994;

Code of Civil Procedure, 1908, Order VII Rule 11.

List of Keywords

Election petition — Personal presentation — Virtual presence — COVID-19 restrictions — Substantial compliance — Order VII Rule 11 CPC — Partial rejection impermissible

CASE ARISING FROM

Order dated 31.05.2025 passed by Additional District Judge, Court No. 1, Muzaffarnagar in Election Petition No. 2 of 2021.

Appearances for Parties

Advs For Petitioner: Abhijeet Mishra, Nipun Singh

Advs For Respondents: Ashish Kumar Singh, Birendra Kumar

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This petition has been filed challenging the order dated 31.05.2025 passed by Additional District Judge, Court No. 1, Muzaffarnagar in Election Petition No. 2 of 21 (Prabhat Tomar Vs. Veerpal and others) rejecting an application under

Order VII Rule 11 of C.P.C. filed by the petitioner.

2. Brief facts of the case are that elections for the post of Member Zila Panchayat were held in State of U.P. on 19.04.2021. The counting started on 02.05.2021 and was completed on 03.05.2021. In the counting, the present petitioner was declared elected as member Zila Panchayat for Ward No. 42 Zila Panchayat, Muzaffarnagar. Respondent No. 1, who was declared second in the aforesaid election filed an election petition being Election Petition No. 2 of 2021 (Prabhat Tomar Vs. Veerpal and others) under Section 27 sub-clause 2 (a) (b) of U.P. Kshettra Panchayat and Zila Panchayat Act, 1961 (hereinafter referred as "Act, 1961") read with Rule 4 of Uttar Pradesh Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994 (hereinafter referred as "Rules, 1994") on various grounds which are given in the election petition itself, which has been annexed as Annexure No. 2 of the petition. Petitioner, who was the elected member of Ward moved an application under Order VII Rule 11 of C.P.C. for rejecting the election petition, which was contested by the election petitioner-respondent No. 1 by filing objections. The Additional District Judge, Court No. 1, Muzaffarnagar by the order dated 31.05.2025 rejected the application filed by the petitioner under Order VII Rule 11 of C.P.C. Hence the present writ petition.

3. Learned counsel appearing for the petitioner contended that the application under Order VII Rule 11 of C.P.C. was filed mainly on two grounds firstly, that the Rules required that the election petition has to be filed by the election petitioner in-person and in case, there are more than one election petitioners then by one of the election petitioners and secondly, on the ground that from the perusal of the election petition, it is apparent that the grounds taken by the election petitioner are wholly vague and the election petitioner has failed to plead the material particulars. It has been contended by counsel for the petitioner that election petition was filed on 02.06.2021 and from the Munsrim Report, it is apparent that the said petition was filed by the petitioner through Shri Netrapal Singh, Advocate. The counsel for the petitioner has invited attention of the Court to the Munsrim Report dated 02.06.2021 which is annexed at page No. 72 A of the petition and the same is quoted as under:

"श्रीमानजी,

यह प्रार्थना पत्र चुनाव याचिका श्री नेत्रपाल सिंह एड० ने प्रस्तुत किया है। प्रार्थी द्वारा ग्रीष्म कालीन अवकाश होने के कारण रूल 13 का प्रार्थना पत्र प्रस्तुत नहीं किया है। कोर्ट फीस की छायाप्रति दाखिल की गयी है। आख्या सेवा में सादर प्रस्तुत है।

ह०अपठनीय
02.06.2021"

4. Learned counsel for the petitioner referred to paragraph Nos. 8 to 14 of the election petition and contended that from the perusal of the aforesaid paragraphs, it is apparent that no details as to the votes (ballot papers) which were alleged to be casted in favour of the election petitioner, but the credit of which has been given to the present petitioner has been given. It has also been contended that by means of the present election petition, election petitioner wants a roving inquiry which is not

permissible. Counsel for the petitioner relied upon the judgment in case of **Devendra Yadav Vs. District Election Officer/ Disrict Magisrate, Mau reported in 2011(9) ADJ 219**, wherein this Court has held while considering an election petition arising from Uttar Pradesh Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994, that the election petition has to be presented by election petitioner personally.

5. Per contra, learned counsel for the respondents submitted that election petition was filed during COVID period i.e. on 02.06.2021. It has also been submitted by counsel for the respondents that because of COVID conditions, certain restrictions were imposed. During COVID period, the parties were permitted to file the election petition etc. through virtual mode also. It has also been submitted by counsel for the respondents that in fact, the election petitioner filed election petition by both the modes. It was filed physically through an Advocate on 02.06.2021 and the said petition was also filed through email along with an application under Rule 13 of General Rules (Civil), 1957. It has been submitted by counsel for the respondents that the petition which was presented physically was submitted through counsel and not by the petitioner but the petition, which was submitted virtually was submitted by the election petitioner through email, which was sent by the election petitioner from his email I.D. and when the matter was taken up on 02.06.2021, the election petitioner was also present through video conferencing and this fact of presence of the election petitioner along with his Advocate was noted by the court in its order dated 02.06.2021, which is at page No. 183 of the petition and the same is quoted as under:-

"प्राथर्थी/विद्वान अधिवक्ता को प्रार्थनापत्र अंतर्गत नियम १३, सामान्य नियम दीवानी पर वर्चुअल कोर्ट के माध्यम से सुना।

उक्त प्रार्थनापत्र इन कथनों के साथ प्रस्तुत किया गया है कि याची ने संलग चुनाव याचिका अंतर्गत नियम-४ उ०प्र० क्षेत्र पंचायत तथा जिला पंचायत अधिनियम १९६१. वार्ड नं० ४२ जिला पंचायत मुजफ्फरनगर के सदस्य पद के चुनाव परिणाम दिनांक ०३.०५.२०२१ को चुनौती देने के संबंध में प्रस्तुत की है। उक्त अधिनियम १९६१ के अनुसार चुनाव परिणाम घोषित होने के उपरांत ३० दिन के अंदर चुनाव याचिका प्रस्तुत करनी है, क्योंकि माननीय उच्च न्यायालय ने दिनांक ०४.०६.२०२५ तक न्यायालय में ग्रीष्मकालीन अवकाश घोषित किया हुआ है तथा याधिका प्रस्तुत करने की नियत अवधि ३० दिन आज दिनांक ०२.०६.२०२१ को समाप्त हो रही है। याची की ओर से नियम १३, सामान्य नियम दीवानी का लाभ देते हुए याचिका को दर्ज किए जाने की याचना की गयी है। सुना तथा संलग्न वाचिका का अवलोकन किया। नियम १३. सामान्य नियम दीवानी के प्राविधान के प्रकाश में यदि किसी आदेश का पारित किया जाना अतिआवश्यक हो, तो न्यायालय अवकाश के दिन भी ऐसा आदेश पारित करने से इंकार नहीं करेगी।

अतः प्रार्थनापत्र में किए गए कथनों के प्रकाश में याची को नियम-१३. सामान्य नियम दीवानी का लाभ दिया जाना न्यायोचित है। अतः प्रार्थनापत्र स्वीकार किए जाने योग्य है।

आदेश

प्रार्थनापत्र अंतर्गत नियम १३, सामान्य नियम दीवानी स्वीकार किया जाता है। याची को चुनाव याचिका प्रस्तुत किए जाने की अनुमति प्रदान की जाती है। कार्यालय नियमानुसार मुंसरिम आख्या अंकित करते हुए संलग याचिका को दर्ज करे।"

6. It has also been submitted by counsel for the respondents that from the opening words of the order dated 02.06.2021, it is apparent that the election petitioner was present along with his counsel when the matter was heard virtually by the court and the leave as contemplated under Rule 13 of General Rules (Civil), 1957 was granted and permission was given to the petitioner to file the election petition and as such the requirement of the Rule for presence of the petitioner personally at the time of presentation of petition has been substantially complied.

7. Counsel for the respondents also submitted that in a petition filed under the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Act, 1961 there is no requirement of pleading material particulars as required under the Representation of People Act, 1951 and the only requirement is that the grounds of challenge have to be mentioned in the election petition. It has been further submitted that apart from the grounds which were referred by counsel for the petitioner, the election petitioner has also taken a ground that the result was declared on 03.05.2021 in which the respondent No. 1 was declared as elected but subsequently, without any notice to the election petitioner, an application for recounting of votes filed by the present petitioner was entertained and recounting was conducted in absence of the election petitioner and the present petitioner was declared elected. It is further contended by counsel for the respondents even assuming as contended by counsel for the petitioner that material particulars regarding the averments as contained in paragraph numbers 8 to 14 are not pleaded but definitely the election petitioner has a cause of action for maintaining the election petition on the ground of recounting of votes for which sufficient pleading has been made by the election petitioner in subsequent paragraphs of the election petition.

8. It has been contended by counsel for the respondents that since the election petitioner has a cause of action for the grounds taken by the election petitioner, the application under Order VII Rule 11 of C.P.C. cannot be allowed, as the plaint/election petition cannot be rejected in part, it can be allowed in whole or has to be rejected.

9. Before considering the rival submissions, it will be necessary to look into the statutory provisions relied upon by both the parties.

10. Section 27 of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961 provides for resolution of disputes as to the membership or disqualification of a member of Zila Panchayat. Section 27 of the Act, 1961 is quoted as under:-

"27. Disputes as to membership or disqualifications - (1) If any dispute arises as to whether a particular person is a member of the Zila Panchayat under

[clause (a)]7 of Section 18, the dispute shall be referred in the manner prescribed to the State Government and the decision of the State Government shall be final and binding.

(2) If a dispute arises as to whether a person –

(a) has been lawfully chosen [x x x]1 a member of a Zila Panchayat under Section 18; or

b) has ceased to remain eligible for being chosen [x x x]2 a member [x x x]3 of the Zila Panchayat for the purposes of Section 20; or

(c) has become disqualified to be Adhyaksha or 4[x x x] for the purposes of Section 19.

the dispute shall be referred in the manner prescribed to the Judge whose decision shall be final and binding."

11. In exercise of powers under Section 27 of the Act, 1961 read with sub-Section 1 and clauses (a) (b) of sub-Section 2 of Section 27 of the Act, 1961, Uttar Pradesh Zila Panchayats (Settlement of Election Disputes relating to Membership) Rules, 1994 have been framed by the State Government. The aforesaid Rules are in form of special enactment providing for a complete procedure for the resolution of election dispute. Rule 4 of Rules, 1994 provides for a procedure of raising dispute under Section 27(2)(a) and (b) of the Act, 1961. Rule 4 of Rules, 1994 is quoted as under:

"4. Manner of raising disputes under Section 27(2)(a) and (b).-(1) If a dispute arises as to whether a person has been lawfully chosen under clause (b) of sub-section (1) of Section 18 the matter shall be referred by means of a written petition by any person who could legally be a candidate at such choosing to the Judge within thirty days of the date of choosing. (2) If a dispute arises as to whether a person has ceased to remain eligible for being chosen a member, the matter shall in the manner as provided in sub-rule (1) be raised by any person whose name is registered as an elector in the Electoral roll for the territorial constituency of the concerned Zila Panchayat. (3) Every petition under sub-rule (1) or sub-rule (2) shall be presented in person by the petitioner, and if there are more than one petitioners by any or all of them."

12. Learned counsel for the petitioner submitted relying upon the judgment of this Court in case of Devendra Yadav Vs. District Election Officer/ District Magistrate Mau (supra) that sub-Rule 3 of Rule 4 of Rules, 1994 provides that every petition under the sub-Rule 1 or sub-Rule 2 shall be presented in person by the petitioner and if, there are more than one petitioners then by any or all of them. It has been further contended that presentation in person has been held to be mandatory in case of Devendra Yadav (supra) and in case, the petition is not presented in person by the petitioner, then the petition has to be rejected and in the present case from the record, it is apparent that election petition was not presented by the petitioner in person and therefore, the same was liable to be rejected and the court below has erroneously rejected the application filed by the petitioner under Order VII Rule 11 of C.P.C., which was filed on the ground that the presentation of the election petition was not in accordance with sub-Rule 3 of Rule 4 of Rules, 1994. It has also been submitted by counsel for the petitioner that though, the case in Devendra Yadav (supra) related to the election for the post of Pramukh of Kshettra Panchayat but the Rule in question in case of Pramukh of

Kshettra Panchayat is Rule 32 of Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 is pari materia with the sub-Rule 3 of Rule 4 of Rules, 1994 and therefore, the judgment in case of Devendra Yadav will squarely apply to the present case.

13. Learned counsel for the respondents though, admitted that the law laid down in case of Devendra Yadav (supra) will also apply to the election for the post of Member Zila Panchayat, which are governed by Rules, 1994 but further submitted that the elections for the post of Member Zila Panchayat were held in the month of May, 2021 and the election petition was filed in June, 2021 during the COVID period. The COVID period was an extraordinary situation and taking note of the said position, certain relaxations were granted by the Hon'ble Supreme Court as well as by this Court regarding conduct of judicial proceedings. It has been submitted by counsel for the respondents that at the time when the Rules, 1994 were framed, the presentation of election petition was only through physical mode as at that time, there was no concept of e-filing of petitions, which came later on and taking note of the extraordinary situation because of the COVID, the Supreme Court has issued direction permitting e-filing of the petitions. Certain restriction were also imposed regarding presence of the parties as well as Advocates during the COVID period in courts and Tribunals.

14. Learned counsel for the petitioner submitted that it is correct that during COVID period, certain restrictions were imposed by this Court and in compliance thereof certain guidelines were issued by the District Judge regarding presentation and conduct of the proceedings before the District Court and other Tribunals. Learned counsel for the petitioner referred to the COVID guidelines dated 22.04.2021 annexed as Annexure No. 3 to the writ petition and submitted that even though, during COVID restriction period, the presence of litigant and Advocate were prohibited but as per the guidelines prevailing on the date of filing of the election petition, litigant/ party entry was permissible subject to the permission granted by the District Judge. Learned counsel for the petitioner relied upon guideline No. 11 issued by this Court on 22.04.2021, wherein it has been provided that District Judge may allow entry of only such litigant/ party, whose presence is required in the court premises. Guideline No. 11 of the Guidelines dated 22.04.2021 are quoted as under:-

"11. The Litigants entry in the Court premises be strictly restricted District Judge may allow entry of only such litigant/parties whose presence is required in the Court premises ."

15. It has been further contended by counsel for the petitioner that from the facts of the present case, it is apparent that no such application was ever made by the respondent seeking permission from the District Judge to appear in person for presenting the election petition. It has also been contended by learned counsel for the petitioner that COVID guidelines were issued on the administrative side by this Court and they cannot override the statutory mandate of sub-Rule 3 of Rule 4 of Rules, 1994, especially, when in the guidelines itself, it has been provided that District Judge may permit a litigant to appear where his presence is necessary. Learned counsel for the petitioner further

submitted that in case of Devendra Yadav (supra) this Court has held that the election petition has to be presented by the petitioner in person and in case, the same is not done, the election petition has to be rejected.

16. Per contra, learned counsel for the respondents submitted that there is no dispute to the proposition of law as laid down by this Court in case of Devendra Yadav (supra) and also to the fact that under certain circumstances, permission can be granted by the District Judge to appear in person but at the same time by the guidelines, filing by both the modes i.e. physical filing as well as e-filing was permitted and in the present case, the petitioner has presented his petition by both the modes. From the record, it is apparent that at the time when the petition, which was filed virtually by the petitioner was taken up by the District Judge, the petitioner was present along with his Advocate virtually, which is noted in the order itself and there has been a sufficient compliance of mandate of sub-Rule 3 of Rule 4 of Rules, 1994.

17. Learned counsel for the respondents relied upon the order dated 02.06.2021, which has already been quoted above to submit that when the matter was taken up, virtually by the District Judge, presence of petitioner was noted in the order by the District Judge itself.

18. Considering the respective arguments of the counsel, there is no dispute to the proposition of law as submitted by counsel for the petitioner that in view of the judgment in case of Devendra Yadav (supra) the requirement under sub-Rule 3 of Rule 4 of Rules, 1994 for presentation of the petition in person by the election petitioner is mandatory and in case, the said condition is not fulfilled by the election petitioner i.e. election petition is not presented in person by the election petitioner, the election petition is liable to be dismissed but considering the facts of the case as well as that the extraordinary situation prevailing due to COVID pandemic, it was permitted that the election petition can be filed by two modes i.e. physical presentation as well as presentation through e-mode, I am of the view that in case, the petition is presented through e-mode and when the petition is taken up by the authority (in the present case by the District Judge) virtually, if the petitioner is virtually present at the time of hearing of the petition that will be sufficient compliance of sub-Rule 3 of Rule 4 of Rules, 1994 for the reason that objective behind the mandatory provision of sub-Rule 3 of Rule 4 of Rules, 1994 is to check that the election petition is not presented by an imposter but a genuine person, who is alive and that it is not frivolous or vexatious. In case of Devendra Yadav (supra) also in paragraph No. 44 of the judgment of this Court has held as under:

"44. In view of the above and the object behind the mandatory provision of Rule 35 (2) of the Rules to check that the election petition is not presented by an imposter but a genuine person who is alive and that it is not frivolous or vexatious, I am of the opinion that irrespective of the fact that the Rules are silent as to the consequence of not presenting the election petition in the manner prescribed, the court has power to dismiss it as not maintainable without compelling the parties to to through the cumbersome process of trial. In such a situation, the court below has not erred in applying the ratio of G.V.

Sreerama Reddy (Supra) and in the dismissing the election petition as not maintainable on the ground it was not presented by the appellant in person or by his counsel in his presence."

19. In the present case, the petition was filed by both the means i.e. physical mode as well as e-mode. It is true that at the time of physical presentation of the petition, the petitioner was not present, but the petition which was e-filed by the petitioner himself from his own e-mail I.D. and while entertaining the e-petition, District Judge has mentioned the presence of the petitioner virtually and therefore, in my view there is sufficient compliance of sub-Rule 3 of Rule 4 of Rules, 1994 and it cannot be said that the petitioner was not presented personally. The fact that the petitioner was present at the time of presentation of the election petition before the court virtually, has not been denied by counsel for the petitioner. Even in the objections filed by the respondent to the application filed by the petitioner under Order VII Rule 11 of C.P.C. in paragraph Nos. 15 and 16 of the objections, it has been stated by the respondent that when the petition which was filed through e-mode was heard by the District Judge on 02.06.2021, the election petitioner was present along with his Advocate through virtual mode. Paragraph Nos. 15 and 16 of the objections filed by the respondent are quoted as under:-

"15. यह कि याची की ओर से प्रस्तुत चुनाव याचिका दिंनाक 01.06.2021 को श्रीमान जिला जज महोदय मुजफ्फरनगर के ई-मेल कम्पयूटर सैन्टर पर याची की ई-मेल आई०डी० के माध्यम से भेजी गयी थी जो दिंनाक 01.06.2021 को बारह बजे के बाद श्रीमान जिला जज महोदय मुजफ्फरनगर के ई-मेल कम्प्यूटर सैन्टर पर ऑफिस को प्राप्त हुई थी जिस कारण उस पर सुनवाई Virtual कोर्ट द्वारा दिंनाक 01.06.2021 को नही की गई थी बल्कि दिंनाक 02.06.2021 को की गई थी।

16. यह कि चूंकि दिंनाक 01.06.2021 को एंव दिंनाक 02.06.2021 को एंव उससे पूर्व कोविड-19 वैश्वक माहमारी के कारण माननीय उच्च न्यायालय के दिशा और निर्देशो के अनुसार न्यायालय द्वारा केवल नये वादो के दायरो की सुनवाई Virutal Court द्वारा ही की जा रही थी और किसी भी अधिवक्ता या वादकारी को न्यायालय में प्रवेश करना वर्जित था। इसलिए दिंनाक 01.06.2021 या दिंनाक 02.06.2021 को याची प्रस्तुत याचिका को व्यक्तिगत रुप से माननीय न्यायालय के समक्ष प्रस्तुत करने में असमर्थ था, इसलिए याची ने प्रस्तुत याचिका की सुनवाई Virtual Court के माध्यम से किये जाने हेतू प्रस्तुत याचिका को सक्षम न्यायालय माननीय जिला जज महोदय के ई-मेल कम्प्यूटर सैन्टर पर अपनी ई-मेल आई०डी० के माध्मय से प्रस्तुत किया था और दिंनाक 02.06.2021 को जब प्रस्तुत याचिका की सुनवाई Virtual Court द्वारा की गई थी तो उस समय भी याची अपने अधिवक्ता श्री नेत्रपाल सिंह एडवोकेट व श्री सुशील कुमार एडवोकेट के साथ Virtual Court के द्वारा की गई सुनवाई के समय व्यक्तिगत रुप से उपस्थित था। और इस सम्बन्ध में Virtual Court द्वारा पूर्ण संतुष्टि सुनवाई के

समय कर ली गई थी और याची ने दिंनाक 02.06.2021 को अपनी और से जनरल रुल 13 सामान्य नियम दीवानी से सम्बन्धित प्रार्थना पत्र अपने हस्ताक्षरों से एंव अपने अधिवक्ता श्री नेत्रपाल सिंह एडवोकेट के माध्यम से अपनी ई-मेल आई०डी० के माध्यम से जिला जज मुजफ्फरनगर को प्रेषित कर दिया था जैसा कि माननीय न्यायालय द्वारा आदेश दिंनाक 02.06.2021 में भी उल्लेखित किया गया है।"

20. Thus, in my view even though the petition which was filed physically was not presented by the petitioner in person will not result in dismissal of the petition for non-compliance of sub-Rule 3 of Rule 4 of Rules, 1994 as the petition which was filed virtually, at the time of presentation, the petitioner was present virtually before the court and therefore, I am of the view that substantial compliance of sub-Rule 3 of Rule 4 of Rules, 1994 has been made and the petition cannot be dismissed at this stage.

21. The next submission made by learned counsel for the petitioner is that the averments made in the election petition are wholly vague and the material particulars as required by law to be given in the election petition are not there, the election petitioner want a roving inquiry, which is not permissible under law. In this regard, counsel for the petitioner relied upon the judgments of Hon'ble Supreme Court and of this Court.

22. Learned counsel for the respondent without going into the merits of the submission made by counsel for the petitioner submitted that the election petition was filed mainly on two grounds, firstly that the counting was not proper by the respondent authorities, averment in this regard has been made in paragraph Nos. 8 to 14 of the election petition, which has also been referred by counsel for the petitioner to contend that the material particulars were not given in those paragraphs and secondly, the petitioner has also challenged the election on the ground that the election petitioner was declared elected in the election and thereafter, on an application being moved by the petitioner behind the back of the respondent, recounting was done by the authorities and in the said recounting the petitioner was declared elected. Averments in this regard have been made by the election petitioner in paragraph Nos. 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the election petition. It has been submitted by counsel for the respondent even assuming for the sake of argument that election petitioner has not given the particulars as submitted by counsel for the petitioner, the election petition is maintainable on the other ground i.e. illegal recounting by the authorities for which all material particulars have been given by the election petitioner. It has been further submitted by counsel for the respondent that if the petition is filed on two separate distinct grounds and even if it is held that petition is not maintainable on one of the ground, the election petition cannot be rejected for the reason that election petition has to be rejected under Order VII Rule 11 of C.P.C. in totality and not in part.

23. I have perused the election petition and have considered the rival submissions made by the respective counsel and from perusal of the election petition, it is apparent that so far as the grounds of challenging the election because of illegal recounting being done behind the back of

the respondent cannot be said to be wanting particulars as sufficient pleading has been made in this regard in the election petition and therefore, without going into the merits of the submission of the petitioner that the ground regarding wrong counting of votes at the time of counting, lacked material particulars, even if the same is taken to be correct the application under Order VII Rule 11 cannot be allowed for the reason that the plaint/election petition has to be rejected in totality and not in part.

24. In my view, I am supported by judgment of the Supreme Court in case of **Kum. Geetha, D/o Late Krishna & others v. Nanjundaswamy & others** passed in Civil Appeal No. 7413 of 2023. Paragraph no. 11 & 12 of the judgment is quoted as under:

"11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11,CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsud Ahmad v. Mathra Datt & Co, AIR 1936 Lahore 1021.This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd, (2018) 11 SCC 780, which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. (2019) 7 SCC 158. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial. ...

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to

clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part..." (emphasis supplied)

12. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground."

25. So far as contention of counsel for the petitioner that the Tribunal has erroneously relied upon Full Bench judgment of this Court in case of **Saumitra Devi Vs. Special Judge** reported in **2006 (6) ADJ 134**, I am not inclined to interfere on this score as I have already held that there was sufficient compliance of the provisions of sub-Rule 3 of Rule 4 of Rules, 1994.

26. In view of the discussions made above, I am of the view that the Election Tribunal/ District Judge has committed no error in rejecting the application filed by the petitioner under Order VII Rule 11 of the C.P.C. The petition lacks merit and is **dismissed**.

(2025) 9 ILRA 817
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.09.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 26340 of 2025

Hamid & Ors. ...Petitioners
Versus
Kailash & Ors. ...Respondents

Counsel for the Petitioner:
Anas Mahboob, Ashish Kumar Singh

Counsel for the Respondents:
Vivek Saran

ISSUE FOR CONSIDERATION

Whether a prospective vendee under an agreement to sell, whose suits for specific performance are pending, can claim a right of apportionment in compensation under Section 76 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, on the basis of such agreement.

HEADNOTE

Transfer of Property Act, 1882 — Section 54 — Agreement to sell — No transfer of ownership — No creation of interest or charge — Only a personal right to seek specific performance — Land later acquired — No Right to claim apportionment of compensation - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 76 — Scope — Limited to existing rights — No adjudication of rights dependent on a pending suit — Mere pendency of suit for specific performance and interim injunction do not confer "interest" entitling compensation apportionment Specific Relief Act, 1963 — Section 21 — Compensation in substitution of specific performance — Relief can be moulded only by Civil Court in suit for specific performance — Not within scope of proceedings under Section 76 of 2013 Act

HELD

Petitioners, on the basis of agreements to sell executed prior to acquisition of land, sought apportionment of compensation before the Land Acquisition Rehabilitation and Resettlement Authority. Their claim was rejected on the ground that pending suits for specific performance did not confer any existing right or title in the acquired land. *Held:* According to

Section 54 of Transfer of Property Act, an agreement to sell does not create any interest in the proposed vendee in the suit property but only creates an enforceable right to the parties. Contract for sale would not make the intending purchaser/vendee to be owner even in equity of estate so long as a sale deed is not executed and registered. Mere execution of a contract for sale by itself would not create any right or interest in the property.The scope of enquiry under Section 76 of the Act of 2013, is to decide the apportionment on the basis of existing rights of the parties and not upon the rights which might accrue to the person in later point of time such as after the decree in a suit for specific performance.Court held that no illegality was committed by the Authority, in passing the order impugned.petition is dismissed. (E-5)

CASE LAW CITED

Namdeo Maung Shwe Goh v. Maung Inn, 1917(1) Bom LR 179;
Sujan Charan Lenka v. Pramila Mumari Mohanty, AIR 1986 Ori 74;
Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647;
Urmila Devi v. Deity, Mandir Shree Chamunda Devi, (2018) 2 SCC 284;
Ramesh Chand v. Tanmay Developers Pvt. Ltd., (2017) 13 SCC 715;
Ram Chander Darak v. Ganeshdas Rathi, AIR 1984 SC 42.

List of Acts

Transfer of Property Act, 1882; Specific Relief Act, 1963; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

List of Keywords

Section 54 TPA — Agreement to sell — No interest — Specific performance — Compensation — Section 76 RFCTLARR — Apportionment — Persons interested — Pending suits — Equitable estate not recognised.

CASE ARISING FROM

Order dated 05.07.2025 passed by Land Acquisition Rehabilitation and Resettlement Authority, Meerut in Reference Case No. 381 of 2023.

Appearances for Parties

Advs For Petitioner: Anas Mahboob, Ashish Kumar Singh
Advs For Respondents: C.S.C., Vivek Saran

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard Shri Ashish Kumar Singh and Shri Anas Mahboob, learned counsel for the petitioner, Shri Vivek Saran, learned counsel for the respondent and perused the record.

2. This petition has been filed challenging the order dated 05.07.2025 passed by Land Acquisition Rehabilitation and Resettlement Authority, Meerut in reference Case No. 381 of 2023 (Kailash and others v. Hamid and others).

3. Brief facts of the case are that disputed land is Khasra No. 346 & 426, situated at village Bijwali, Tehsil & District Meerut. Agreement to sell were executed by the recorded tenure holders in favour of the petitioners regarding part of land of Khasra No. 346 & 426 referred above. When the sale deed was not executed in pursuance of agreements, various suits were filed for specific performance of an agreement, details of which are as under:

(1) Original Suit No. 21 of 2017 was instituted by the petitioner nos. 2, 3 & 4 against respondent nos. 1, 2, 3, 4, 5, 6 and predecessor in interest of respondent no. 9 for specific performance of an agreement to sell dated 29.01.2013 regarding the 14/8 portion of Khasra No. 426, area 0.487375 hec. The consideration agreed between the parties was Rs. 43,86,000/- and a sum of Rs. 4,00,000/-

was paid towards earnest money and the remaining amount of Rs. 39,86,000/- was to be paid at the time of execution of sale deed. The time for execution of sale deed was one year from the date of execution of the agreement. The said suit was filed on 09.01.2017, which is pending before Civil Judge (S.D.), Meerut and the trial court by order dated 31.05.2018, directed the defendants/respondents not to alienate the property in dispute to any other person.

(2) Original Suit No. 85 of 2017 was instituted by petitioner no. 9 against respondent nos. 1 to 6 and predecessor in interest of respondent no. 9.1, 9.10 & 9.11 for specific performance of an agreement dated 25.08.2013 regarding their share 1/6 share in Khasra No. 426 area 1.1140 hec., situated at village Bijauli, Tehsil & District Meerut. The total sale consideration agreed between the parties was Rs. 8,36,000/- out of which Rs. 25,000/- was paid as earnest money. The date of execution was fixed as 26.02.2014.

(3) Original Suit No. 117 of 2017 was instituted by petitioner no. 1, against one Satyawati predecessor in interest of respondent no. 1 to 4, regarding their 1/4 share in Khasra No. 346 for specific performance of an agreement to sell dated 29.01.2013. The total sale consideration agreed between the parties was Rs. 13,59,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the said suit, an alternative prayer was made for refund of earnest money. By an interim injunction order dated 14.12.2017, the trial court restrained the defendants from alienating their 1/6 share in Khasra No. 346 and also directed the parties to maintain status quo.

(4) Original Suit No. 126 of 2017 was instituted by petitioner no. 10 against respondent nos. 1 to 6 and predecessor in interest of respondent no. 9.1, 9.10 & 9.11 for specific performance of an agreement to sell dated 23.08.2013 regarding Khasra No. 426. The total sale consideration agreed between the parties was Rs. 12,12,000/- out of which Rs. 50,000/- was paid as earnest money.

(5) Original Suit No. 135 of 2017 was instituted by petitioner nos. 5 & 6 against respondent nos. 1 to 6 and predecessor in interest of respondent nos. 9.1, 9.10 & 9.11 for specific performance of an agreement to sell dated 26.09.2013 regarding Khasra No. 426. The total sale consideration agreed between the parties was Rs. 38,02,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made. The trial court by order dated 13.04.2018, granted an interim injunction restraining the defendants from alienating the property in dispute.

(6) Original Suit No. 86 of 2017 was instituted by petitioner no. 9 against respondent no. 7 regarding Khasra No. 426 on 18.04.2013. The total sale consideration agreed between the parties was Rs. 16,72,000/- out of which Rs. 25,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made.

(7) Original Suit No. 119 of 2017 was instituted by petitioner no. 7 & 8 against one Satyawati, predecessor in interest of respondent no. 1 to 4 for specific performance of an agreement to sell dated 23.08.2013 for 1/4 share in Khasra No. 346 on 20.08.2023. The total sale consideration agreed between the parties was Rs. 18,84,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made.

4. During the pendency of the aforementioned suits, Uttar Pradesh

Expressways Industrial Development Authority (herein after referred to as " UP EIDA") issued a notification under Section 11 of the U.P. Right to Fare Compensation and Transparancy in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013") for acquiring the land in dispute for construction of Ganga Express Way. Notification under Section 19 was issued on 06.07.2022. On 24.08.2022, award was passed. On 27.09.2022, the respondents filed an application before the Additional District Magistrate, Meerut for payment of awarded amount being the recorded tenure holders of the land in dispute. Objections were filed by the petitioners for disbursement of compensation amount. By order dated 10.01.2023, A.D.M., Land Acquisition Meerut, considering the objections of the petitioners that their suits for specific performance of agreements executed by the respondents are pending regarding the Khasra No. 346 & 426, passed an order that dispute be referred under Section 76 of the Act of 2013. The order dated 10.01.2023 was challenged by the respondents by filing Writ C No. 11901 of 2023. The said writ petition was dismissed and 4th respondent in the said writ petition was directed to refer the matter to the authority for decision under Section 76 of the Act of 2013. Thereafter, A.D.M. Meerut (Finance & Revenue) referred the matter under Section 76 of the Act of 2013 to the Land Acquisition Rehabilitation and Resettlement Authority. Both the parties after receiving notice from the authority filed their objections and evidence. The respondent authority i.e. Land Acquisition and Resettlement Authority Meerut by its judgment and order dated 05.07.2025 allowed the claim of the respondents holding them to be entitled for compensation and rejected the objections filed by the petitioners on the ground that the petitioners had no interest as the petitioners are not the owner of the land in dispute and has further directed for refund of earnest money paid along with interest by the respondents. After payment of earnest money, the respondents will be entitled for remaining compensation amount, hence the present petition

5. Contention of the learned counsel for the petitioners is that the court below has erroneously rejected the claim of the petitioner. The petitioners are holder of agreement to sell in their favour by the respondents, executed much prior to acquisition of land by U.P. EIDA and the suits for specific performance of agreements to sell executed by the respondents are pending before the civil court and in certain suits interim injunction has also been granted in favour of the petitioners/plaintiffs by the civil court restraining the defendants/respondents from alienating the property in dispute as well as directing the parties to maintain status quo. It has been further contended by learned counsel for the petitioner that the petitioners are the persons interested and their claim has wrongly been rejected by the authority. It has been further contended by learned counsel for the petitioner that agreement to sell created an interest in the land itself in favour of the intending purchaser therefore, the petitioners are the persons interested in the compensation.

6. Per contra, learned counsel for the respondents submitted that mere execution of agreement to sell does not confer any title on the parties. At the best, the petitioners are entitled for specific performance of agreements which were executed by the respondents. It has been further contended by learned counsel for

the respondents that since the land now been acquired, no relief of specific performance can be granted in favour of the petitioners. Mere pendency of suits for specific performance of agreements to sell will not confer any right or the same cannot be interpreted that the plaintiff in the aforesaid suit will be a person interested in the compensation amount and claim apportionment of the compensation. It has also been contended by learned counsel for the respondents that till now, the suits are pending and it has not been decided as to whether the plaintiffs in the suit are entitled for decree of specific performance. It is possible that their suit may be dismissed and therefore, the authority has committed nothing wrong in rejecting their claim and directed for refund of earnest money as now their suits cannot be decreed for specific performance because of operation of law as the land has been acquired. It has been further contended that grant of interim injunction, in favour of the plaintiffs, restraining the defendants from alienating the property in dispute or to maintain status quo, is of no avail as the same is not binding on the State in case of compulsory acquisition under the Act of 2013.

7. Before considering the rival submissions it would be appropriate to consider Section 54 of the Transfer of Property Act, 1882 which is quoted as under:

*54. **"Sale" defined**.-"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made.**-Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

***Contract for sale.**-A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."*

8. An agreement to sell of property and promise to transfer the property convey the same meaning and effect in law. A promise to transfer property is an agreement for sale of property. According to Section 54 of Transfer of Property Act, an agreement to sell does not create any interest in the proposed vendee in the suit property but only creates an enforceable right to the parties. An agreement for sale is not the same as sale and the title to the property agreed to be sold still vests in the vendor in case of an agreement to sell but in the case of sale, title of property vests with the purchaser. An agreement for sale is a executory contract wherein a sale is a executed contract. The question as to whether an agreement to sell creates any right is no more res-integra and has been settled by authoritative pronouncement made by this Court as well as Apex Court and various other High Courts.

9. The Supreme Court in case of **Namdeo v. Collector, East Neemar, Khandwa and others** reported in **AIR**

1996 SC 975 held in paragraph no. 7 as under:

"7. ..... An agreement of sale does not convey any right, title or interest. It would create only an enforceable right in a court of law and parties could act thereon. The right, title and interest in the land of Devi Prasad stood extinguished only on execution and registration of the sale deed and admittedly it was done in 1974. Therefore, the sale deeds are within the prohibited period."

10. The Supreme Court in case of **State of U.P. v. District Judge and others** reported in **(1997) 1 SCC 496** held in paragraph no. 7 as under:

"7. Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an Agreement to Sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered Sale Deed. It is not in dispute that the lands sought to be covered were having value of more than Rs.100/-. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect."

11. In case of **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (dead) through LRS**. reported in **(2004) 8 SCC 614**, the Supreme Court held in paragraph no. 13 as under:

"13. The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs. 100. Therefore, unless there was a registered document of sale in favour of the Pishorrilal (proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership....."

12. Again in case of **Balwant Vithal Kadam v. Sunil Baburaoi Kadam** reported in **MANU/SC/1525/2017 & AIR 2018 SC 49**, the Supreme Court held in paragraph no. 17 as under:

"17. So far as the plea relating to validity and enforceability of the agreement in question is concerned, it was rightly held by the High Court to which we concur that the agreement in question is not hit by Section 48 of the Maharashtra Co-operative Society Act inasmuch as the agreement to sell in itself does not create any interest in the land nor does it amount to sale under Section 54 of the T.P. Act. It only enables the intending buyer to claim specific performance of such agreement on proving its terms. In other words, there lies

a distinction between an agreement to sell, and sale. The latter creates an interest in the land once accomplished as defined under Section 54 of the T.P. Act.″

13. This Court in case of **Babu Lal and others v. Nathi Lal** reported in **2013 (6) ADJ 111 (MANU/UP/0838/2013)**, has held in paragraph no. 16 & 17 as under:

16. However, in my view there is no scope for bringing in way Section 8 of HMG Act in the case in hand inasmuch an "agreement for sale" does not tantamount to transfer of immovable property, subject matter of agreement for sale, to anyone. It does not confer any proprietary rights to the prospective vendee. Thus, apparently, Section 8 would not be attracted for entering into an agreement for sale. The nature of contract for sale has been discussed by the Courts time and again.

17. The agreement for sale or contract for sale, by itself is not an instrument giving effect to sale of immoveable property. The title to property agreed to be sold continued to vests in the vendor, in case of agreement for sale, but in case of sale, title or property vests with purchaser. In other words an agreement for sale is an executory contract whereas sale deed is an executed contract. An agreement for sale does not create an interest in the proposed vendee in the suit property but only creates an enforceable right in parties. An agreement for sale of property, and promise to transfer the property convey the same meaning and effect in law. A promise to transfer property is an agreement for sale of property.″

14. In **Maung Shwe Goh v. Maung Inn, 1917(1) Bom LR 179** the Court considered Section 54 of Transfer of Property Act, 1882 and said that a contract for sale by virtue of Section 54 creates no interest in or charge upon the land.

15. In **Jiwan Das v. Narain Das, AIR 1981 Delhi 291** a Single Judge in para 10 and 11 of the judgment, following Rambaran Prosad (supra), said:

"10. . . . . the law in India does not recognise any such estate. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate, No privity in estate can be deduced there from which can bind estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale.

11. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed."

16. In **Sujan Charan Lenka and others v. Smt. Pramila Mumari Mohanty and others, AIR 1986 Ori 74**, the Court in para 7 of judgment, said, that a bare contract for sale of immoveable property does not create any interest in immoveable property.

17. Thus, in my view from the judicial opinion as discussed above and in view of Section 54 of the Transfer of Property Act, an agreement to sell does not create any interest in or charge upon such property which is subject matter of the agreement to sell. The prospective vendee in an agreement to sell only gets a right to get the agreement specifically enforced for execution of sale deed. In other words, a person having an agreement for sale does not get any right over the property except the right of litigation on that basis. Sometimes, it is also describes that a contract for a sale is merely a document, creating a right to obtain another document. A contract for sale does not, by itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No privity in estate can be deduced therefrom which can bind the estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed.

18. So far as the contention of the learned counsel for the petitioner that agreement to sell created an equitable interest in the land in favour of the purchaser, is misconceived. The law in India does not recognise equitable estates and the English Rule that the contract makes a purchaser owner in equity of the estate, does not apply in India.

19. In case of **Rambaran Prosad v. Ram Mohit Hazra and others** reported in **AIR 1967 SC 744 & MANU/SC/0212/1966**, the Supreme Court has held in paragraph no. 14 & 15 as under:

14. In the case of an agreement for sale entered into prior to the passing of the Transfer of Property Act, it was the accepted doctrine in India that the agreement created an interest in the land itself in favour of the purchaser. For instance, in Fati Chand Sahu v. Lilambar Sing Das (1871) 9 B.L.R. 433 a suit for specific performance of a contract for sale was dismissed on the ground that the agreement, which was held to create an interest in the land, was not registered under s. 17, cl. (2) of the Indian Registration Act of 1866. Following this principle, Markby J. in Tripoota Soonduree v. Juggur Nath Dutt (1875) 24 W.R. 321 expressed the opinion that a covenant for pre-emption contained in a deed of partition, which was unlimited in point of time, was not enforceable in law. The same view was taken by Baker J. in Allibhai Mahomed Akuji v. Dada Allis Isap A.L.R. 1931 Bom. 578 where the option of purchase was contained in a contract entered into before the passing of the Tranfer of Property Act. The decision of the Judicial Committee in Maharaj Bahadur Singh v. Bal Chanad 48 I.A. 376 was also a decision relating to a contract of the year 1872. In that case, the proprietor of a hill entered into an agreement with a society of Jains that, if the latter would require a site thereon for the erection of a temple, he and his heirs would grant the site free of cost.

The proprietor afterwards alienated the hill. The society, through their representatives, sued the alienees for possession of a site defined by boundaries, alleging notice to the proprietor requiring that site and that they had taken possession, but been dispossessed. It was held by the Judicial Committee that the suit must fail. The Judicial Committee was of the opinion that the agreement conferred on the society no present estate or interest in the site, and was unenforceable as a covenant, since it did not run with the land, and infringed the rule against perpetuity. Lord Buckmaster who pronounced the opinion of the Judicial Committee observed as follows:

"Further, if the case be regarded in another light-namely, an agreement to grant 'in the future whatever land might be selected as a site for a temple-as the only interest created would be one to take effect by entry at a later date, and as this date is uncertain, the provision is obviously bad as offending the rule against perpetuities, for the interest would not then vest in present, but would vest at the expiration of an indefinite time which might extend beyond the expiration of the proper period."

15. But there has been a change in the legal position in India since the passing of the Transfer of Property Act. Section 54 of the Act states that a contract for sale of immovable property "does not, of itself, create any interest in or charge on such property"

20. It is thus, evident that law as it stand, is very clear that contract for sale would not make the intending purchaser/vendee to be owner even in equity of estate so long as a sale deed is not executed and registered. Mere execution of a contract for sale by itself would not create any right or interest in the property.

21. Learned counsel for the petitioner submitted that in view of Section 21 of the Specific Relief Act in a suit for specific performance of contract, the plaintiff can also claim compensation for the breach of contract. It has been further contended by learned counsel for the petitioner that in case, any suit filed for specific performance of an agreement for sale, the court comes to a conclusion that specific performance of an agreement cannot be granted but there is a contract between the parties which has been broken by the parties in such case, the petitioner entitled for the compensation for breach and can always be awarded compensation/damages for the breach, if any.

22. Section 21 of the Specific Relief Act is quoted as under:

*"**21. Power to award compensation in certain cases.**-(1)In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance*

(2)If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3)If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4)In determining the amount of any compensation awarded under this section, the court shall be guided by the principles

specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5)No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.″

23. Learned counsel for the petitioner relied upon the judgment of the Apex Court in case of **Jagdish Singh v. Natthu Singh** reported in **(1992) 1 SCC 647**, wherein the Apex Court after considering the provisions of Section 21 of the Specific Relief Act upheld the directions given by the High Court in a second appeal, arising from a suit for specific performance, granting damages to the plaintiff after holding that the plaintiff was ready and willing to perform the contract and the defendant was liable for breach of contract. The Supreme Court held that any suit for specific performance compensation can be awarded where contract became incapable of specific performance without any fault of the plaintiff. Paragraph no. 12, 14, 15, 16, 17, 24, 27, 29 & 30 of the judgment in case of **Jagdish Singh v. Natthu Singh (Supra)** are quoted as under:

12. As to the relief available to a plaintiff where the subject matter was acquired during the pendency of a suit for specific-performance the High Court said:

"...The learned counsel for the respondent has vehemently urged that after the land has been acquired its corpus has ceased to exist and no decree for specific performance can now be granted. In my opinion with the acquisition of the land plaintiffs rights do not get extinguished in totality. The appellate court always suitably mould the relief which the circumstances of the case may require or permit. The power in this regard is ample and wide enough

However, in the present case the property has not been totally lost. What happens in the case of the acquisition is that for the property compensation payable in lieu thereof is substituted...″

14. We are afraid the approach of the High Court is perhaps somewhat an over-simplification of an otherwise difficult area of law as to the nature of relief available to a plain- tiff where the contract becomes impossible of specific performance and where there is no alternative prayer for compensation in lieu or substitution of specific performance. While the solution that has commended itself to the High Court might appear essentially just or equitable, there are certain problems both of procedure and of substance in the administration of the law of specific relief particularly in the area of award of an alternative relief in lieu or substitute of specific performance that require and compel consideration, especially in view of some pronouncements of the High Courts which have not perceived with precision, the nice distinctions between this branch of the law as administered in England and in India.

15. Section 21 of the Specific Relief Act, 1963 corresponding to Section 19 of 1877 Act enables the plaintiff in a suit for specific performance also to claim compensation for its breach either in addition to or in substitution of, such performance. Sub-sections (2), (4) and (5) of Section 21 are material and they provide:

"21. (2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a

contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award his such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872, 9 of 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. Explanation-The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section."

(emphasis added)

16. So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific-performance the court will allow the amendment at any stage of the proceeding. That is a claim for compensation failing under Section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the Conversion of a suit for specific performance into one for damages for breach of contract in which case Section 73 of the Contract Act is invoked. This amendment is under the discipline of Rule 17 Order 6, C.P.C. The fact that sub-section (4), in turn, invokes Section 73 of the Indian Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction.

17. The provisions of Section 21 seem to resolve certain divergencies of judicial opinion in the High Courts on some aspects of the jurisdiction to award of compensation. Sub- section (5) seeks to set at rest the divergence of judicial opinion between High Courts whether a specific claim in the plaint is necessary to grant the compensation. In England Lord Cairn's (Chancery Amendment) Act, 1858 sought to confer jurisdiction upon the Equity Courts to award damages in substitution or in addition to specific performance. This became necessary in view of the earlier dichotomy in the jurisdiction between common law and Equity Courts in the matter of choice of the nature of remedies for breach. In common law the remedy for breach of a contract was damages. The Equity Court innovated the remedy of specific performance because the remedy of damages was found to be an inadequate remedy. Lord Cairn's Act, 1858 conferred jurisdiction upon the Equity Courts to award damages also so that both the reliefs could be administered by one court. Section 2 of the Act provided:

"2. .. In all cases in which the Court of Chancery has jurisdiction to entertain an application for specific performance of any covenant, contract or agreement it shall be lawful for the same Court if it shall think fit to award damages to the party injured either in addition to or in substitution for such specific performance and such damages may be assessed as the Court shall direct."

24. When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian Law where the contract, for no fault of the plaintiff, becomes impossible of performance section 21 enables award of compensation in lieu and substitution of specific performance.

27. The measure of the compensation is by the standards of Section 73 of the Indian Contract. Here again the English Rule in Bain v. Fothergill, (1874) L.R. 7 House of Lords 158 that the purchaser, on breach of the ,contract, cannot recover, for the loss of his bargain is not applicable. In Pollock & Mulla on Contract (10th Edn.) the law on the matter is set out thus :

"Where, therefore, a purchaser of land claims damages for the loss of his bargain, the question to be decided is whether the damages alleged to have been caused to him 'naturally arose in the Usual course of things from such breach'; and in an ordinary case it would be difficult to hold otherwise."

29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.

30. We accordingly confirm the finding of the High Court that Respondent was willing and ready to perform the contract and that it was the Appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs.1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal-claims for compensation."

24. Learned counsel for the petitioner relied upon the judgment in case of **Urmila Devi and others v. Deity, Mandir Shree Chamunda Devi and others** reported in **(2018) 2 SCC 284**, wherein the Apex Court relying upon the judgment of the Apex Court in case of Jagdish Singh (Supra) considered the question as to what relief plaintiff/petitioner was entitled in the event of decree for specific performance was required to be modified by an alternate decree. Paragraph no. 9, 12, 15 & 16 of the judgment in case of Urmila Devi (Supra) are quoted as under:

"9. From the facts and material on record, it is undisputed that agreement to sell was executed by defendant Nos.1 to 5 in favour of the plaintiff and entire sale consideration of Rs.90,000/- was received and possession was delivered in the year 1989 itself. Plaintiff constructed three shops on the suit land. Plaintiff's case that to defeat the rights of the plaintiff a gift deed dated 08.07.1991 was executed by defendant Nos.1 to 5 in favour of defendant No.6 has been accepted by courts below which have declared the gift deed as null and void. The decree for specific

performance was granted by the trial court, it was confirmed by the First Appellate Court. The suit land was acquired and compensation was determined in favour of defendant No.6 whose name was recorded in the Revenue records. No objection can be taken to the view of the High Court that consequent of the acquisition of suit land under the land acquisition proceedings decree of specific performance granted in favour of plaintiff could not have been maintained.

12. This Court had occasion to consider Section 21 of the Specific Relief Act in context of a case which arose almost on similar facts in Jagdish Singh vs. Nathu Singh, 1992 (1) SCC 647. In the above case also suit was filed for specific performance on the basis of a contract to sell dated July 3, 1973, the suit was dismissed by the trial court as well as First Appellate Court. However, the High Court in second appeal reversed the finding of the courts below and held that plaintiff was ready and willing to perform the contract and was entitled for decree. In the above case also during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land was initiated and the land was acquired. Question arose as to whether plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money. The High Court in the above case has modified the decree of the specific performance of the contract with decree for a realisation of compensation payable in lieu of acquisition. In paragraph 13 of the judgment the directions of the High Court were extracted which is to the following effect:

"13. The High Court issued these consequential directions:

"If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiff shall have a right to recover such compensation together with solatium and interest due thereon. The plaintiff shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest at the rate of 12 per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land."

15. From materials brought on record, it does appear compensation was determined in favour of defendant No.6 to the extent of amount of Rs.10,03,743/. It also appears that compensation towards shops was also determined. The name of defendant No.6 being recorded in the Revenue records, compensation was determined in its favour. In view of the judgment and decree of courts below whereby the gift deed dated 08.07.1991 has been declared void, defendant No.6 is left with no right in the suit land and is clearly not entitled to receive any amount consequent to the acquisition of the suit land. It has not come on the record as to whether compensation consequent to the acquisition of the suit land has been received by defendant No.6(respondent No.1 to the appeal) or not.

16. Taking into consideration overall facts of the present case, we are of the view that ends of justice be served in awarding compensation of Rs.10 lakh in favour of the plaintiff appellants out of the compensation received consequent to the

acquisition of the suit land. The rest of the compensation, if any, received towards land and shops in question has to be paid to the land owner that is defendant Nos.1 to 5 (respondent Nos.2 to 6 to this appeal) after deducting an amount of Rs.10 lakh out of the said compensation. We further direct in event compensation has not yet been disbursed, the compensation be disbursed to the appellants (legal heirs of the plaintiff) and respondent Nos.2 to 6 in the above manner and in the event the compensation has been received by defendant No.6 (respondent No.1), respondent No.1 shall return the compensation to the extent of Rs.10 lakh to the appellants and the rest of the amount to defendant Nos.1 to 5 (respondent Nos.2 to 6). The judgment and decree of the High Court dated 02.11.2012is modified to the above extent.″

25. Learned counsel for the petitioner relied upon the judgment in case of **Sukhbir v. Ajit Singh** reported in **(2021) 6 SCC 54**, relying upon earlier judgments in case of Jagdish Singh (supra) & Urmila Devi and others (supra) and held in paragraph no. 10, 11, 12 & 13 as under:

"10. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case in hand, it cannot be said that the High Court has committed any error in modifying the decree for specific performance. As rightly held by the High Court, as such, the plaintiff will be deemed to be in the shoes of the defendant and therefore shall be entitled to the amount of compensation, determined and awarded under the provisions of the Land Acquisition Act.

11. Now so far as the submission on behalf of the appellant that as compensation has not been specifically prayed by the plaintiff in the suit, the plaintiff shall not be entitled to any amount of compensation even considering Section 21 of the Specific Relief Act. The aforesaid has no substance. The decree for compensation is passed as an alternate decree and in lieu of the decree for specific performance.

12. Now so far as the amount of compensation is concerned, as observed by this Court in the case of Jagdish Singh (supra), the compensation determined and awarded under the Land Acquisition Act may safely be taken into consideration. Therefore, the High Court has rightly observed and held that the plaintiff shall be entitled to the entire amount of compensation awarded under the Land Acquisition Act together with interest and solatium. However, at the same time, the defendant - original land owner shall also be entitled to the deduction therefrom of money value of the services, time and energy expended in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award. As such, nothing is on record to suggest that any expenses have been incurred by the appellant. However, in the facts and circumstances of the case and considering the decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi (supra), ends of justice will be served if the plaintiff is awarded the entire amount of compensation determined under the Land Acquisition Act together with interest and solatium less Rs. 2,50,000/- + Rs.50,000/- (towards the balance sale consideration).

13. In view of the above and for the reasons stated above, the present appeal is disposed of by modifying the impugned judgment and order passed by the High Court to the extent directing and holding that the plaintiff - respondent

herein shall be entitled to recover the entire amount of compensation along with solatium and interest awarded under the provisions of the Land Acquisition Act, which is reported to be lying/deposited with the acquiring body with respect to the land in question minus Rs. 3,00,000/- (Rs. 2,50,000/- towards the expenses which might have been incurred in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award + Rs. 50,000/- towards balance sale consideration). Therefore, the appellant - defendant shall be entitled to Rs. 3,00,000/- from the amount of compensation deposited with the acquiring body and the balance amount of compensation together with interest and solatium to be paid to the original plaintiff.″

26. I have perused the judgments relied upon by learned counsel for the petitioner. There is no dispute as to the law as laid down by the Apex Court that in a suit for specific performance of an agreement to sell, in case, a relief of specific performance cannot be granted for no fault of the defendant (for example where the land is subject matter of the agreement, is acquired during the pendency of the suit), relief can be moulded and compensation can be awarded to the plaintiff and the compensation to be awarded to the plaintiff would be the compensation which was to be paid to the defendant in the acquisition proceedings after adjusting the balance of sale consideration and the amount which has been incurred by the defendant in acquisition proceedings. Before granting alternative relief of damages in a suit for specific performance, a finding has to be recorded that the breach of agreement was not on the part of plaintiff and was on the part of defendant and that the petitioner is entitled for specific relief but for no fault of petitioner, the same cannot be granted.

27. In cases relied upon by the plaintiff/petitioner, such relief was granted and can be granted only in a suit for specific performance of an agreement to sell after recording a finding that the plaintiff was entitled for decree of specific performance but because of acquisition of the land during the pendency of the suit, such relief could not be granted to the plaintiff and in alternate, the damages can be awarded by the court while deciding the suit. In all the cases, referred above by the learned counsel for the petitioner, relief was granted to the plaintiff in proceedings arising out of suit of specific performance of contract. There is no dispute to the proposition that such a relief can be granted in a suit for specific performance of contract.

28. Learned counsel for the respondent has rightly contended that though such relief can be granted in a suit for specific performance but the same cannot be granted while considering an application under Section 76 of the Act of 2013. Learned counsel for the respondent further contended that no such relief can be granted under Section 76 of the Act of 2013 as the scope of enquiry is very limited. The authority while exercising the power under Section 76 of the Act of 2013 has to consider the rival claim of the parties on the basis of right which has accrued to the either of the parties and not on the basis of a right which is yet not decided by a competent court of law. It has also been contended by learned counsel for the respondent that right to claim compensation in a suit for specific performance of an agreement is dependent on various factors

such as that the fault was on the part of the defendant i.e. executor of the agreement and not on the part of the plaintiff. In case, such findings are recorded by the court while deciding the suit for specific performance and after holding the plaintiff to be entitled for a decree for specific performance, relief can be moulded by the court while deciding the suit, if it comes to the conclusion that though the plaintiff is entitled for a decree for specific performance but for a intervening circumstance, such as compulsory acquisition of land which was subject matter of the suit, by the State, for no fault of the plaintiff, the said relief cannot be granted. It has been pointed out by the learned counsel for the respondent that all the cases relied upon by the learned counsel for the petitioners, wherein the principle of grant of damages in lieu of decree for specific performance of contract, the orders were passed in proceedings arising out of suit for specific performance and not in proceedings under Section 76 of the Act of 2013 or under Section 30 of the Land Acquisition Act, 1894. There is no dispute to the proposition that damages can be awarded in a suit for specific performance. In case, an agreement is not capable of specifically enforcing for no fault of the plaintiff. But said relief cannot be granted in a proceedings under Section 76 of the Act of 2013 while deciding the claim of apportionment of the compensation between the rival claimants.

29. Word apportionment frequently denotes the distribution and not division and in its ordinary technical sense, the distribution of one subject in proportion to another. To apportion means to assign a proper portion. The action of apportioning means, the division of rights or liabilities among several persons entitled or liable in accordance with their respective interest. The acquisition transforms the property into a certain sum of money, but the right of the parties relatively to this sum ought to be the same and they were with reference to the properties.

30. The scope of enquiry under Section 76 of the Act of 2013, is to decide the apportionment on the basis of existing rights of the parties and not upon the rights which might accrue to the person in later point of time such as after the decree in a suit for specific performance. The damages can be awarded in a suit for specific performance only in case, the plaintiff succeeds in proving his case but not otherwise.

31. Learned counsel for the respondent relied upon the judgment of Supreme Court in case of **Ramesh Chand and others v. Tanmay Developers Pvt. Ltd**. reported in **(2017) 13 SCC 715**. In case of Ramesh Chandra (Supra) certain agreements to sell were executed. The land owners on failure of purchaser to get the sale deed executed forfeited earnest money. Suits for recovery of earnest money were filed and one suit was filed for specific performance of agreement to sell by the intending buyer. No reference under Section 18 of the Land Acquisition Act was sought by the prospective buyers and during the pendency of the suit already filed for return for earnest money, an application under Section 30 was filed for recovery of earnest money. The reference court rejected the reference. The order of the reference court was challenged and allowed and directed that the earnest money be refunded.

32. The Supreme Court in the said circumstances, held that there are serious disputed question of fact such as, whether

earnest money was rightly forfeited by the land owners due to failure of the agreement holder to obtain sale deed executed within a specified time fixed under the agreement where the respondents were ready and willing to purchase the property and had arrangement of consideration for payment to the land owners. Relevant paragraph no. 8 & 9 of the judgment in case of Ramesh Chand and others (supra) are quoted as under:

"8. In the instant case, there were serious disputed questions as to whether earnest money had been rightly forfeited by the land owners due to the failure of the respondent No. 1 to obtain the sale deeds executed within stipulated time fixed under the agreements, whether respondents were ready and willing to purchase the property and had arrangement of balance consideration for payment to land owner. Whether the power of forfeiture was rightly exercised by the land owners as claimed by them. The Civil Court was already in seisin of the matter as such reference court had rightly rejected the reference made under Section 30 of the Act and rightly asked parties to await outcome of the regular civil suits.

9. The High Court in the impugned judgment has not decided aforesaid objections raised by the appellants/land owners without examining facts and circumstances of the case and due to pendency of civil suits, it was not open to the High Court to order refund of the earnest money."

33. The Supreme Court in case of **Ram Chander Darak v. Ganeshdas Rathi and others** reported in **AIR 1984 SC 42 (MANU/SC/0300/1983)** rejected the claim of apportionment of compensation in respect of property acquired, in his capacity as the reversioner of the last male owner on the ground that in the life time of the widow, the reversioner cannot claim any title in presenti to the property which was subject matter of the acquisition and consequently he is not entitled to receive compensation in life time of the widow and therefore, could not have asked for apportionment of the compensation in his favour.

34. Apportionment presupposes an existing right in a person regarding the land. Apportionment cannot be claimed only on the basis of a right which may accrue to the person claiming apportionment in future. Since, an agreement to sell only enables the intending buyer to claim specific performance of an agreement on proving its terms. No right can be said to be in existence during the pendency of the suit unless the holder of an agreement is able to prove his case and is found entitled for a decree of specific performance in a suit filed by him. Further law as in India does not recognise any equitable estate in favour of the intending purchaser on the basis of an agreement to sell. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on the property, coverned by the estate such an agreement/contract is merely a document creating a right to obtain another document in the form of a sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No privity in estate can be deduced there from which can bind estate. In fact, even if, a decree for specific performance of contract is obtained and no sale deed is actually executed, it cannot be said that any interest in the property has passed. Admittedly, in the

present case, the value in the property involved is more than hundred crores, and therefore, there cannot be any transfer of interest in favour of the intending buyer merely on the basis of an agreement to sell. In the facts of the present case, since the suits for specific performance of agreements to sell, are already pending, therefore, there was no occasion for the reference court to consider the entitlement of the petitioners on the basis of agreements to sell executed in their favour. The rights of the parties will be dependent on the outcome of the pending suits.

35. Learned counsel for the petitioner lastly submitted that disbursement of compensation should be stayed and the amount may be directed to be deposit in a fixed deposit till disposal of the suit filed by the petitioners. It has further been submitted by learned counsel for the petitioner that in case, petitioner succeeds in the suits filed by the petitioners, for specific performance of agreements which are pending till date and a decree for damages is passed against the respondents, if the money is not deposited, there is likelihood that the respondents in order to frustrate the decree passed against them may dispose of the compensation amount. The contention of the learned counsel for the petitioner is misconceived. In case, the petitioners succeed in the suits filed by the petitioners, and are able to obtain a decree for damages, the same will be the money decree capable of being executed. At present, it cannot be said that how much time will be consumed in deciding the suits filed by the petitioners and in case, the money is directed to be deposited in fixed deposit and be not paid to the recorded owner of the property, may cause prejudice to the recorded owner who is otherwise entitled for the same. Further, in case, the petitioners fail and their suits are dismissed, irreparable loss will be caused to the respondents as they will be entitled only for the bank interest, in case, the money is directed to be deposited which otherwise can be used by them at present. In case, the petitioners succeed, the decree will be a money decree which is capable of being executed. There is no likelihood of any irreparable injury to the petitioners.

36. In view of the discussion made above, I am of the view that no illegality has been committed by the Land Acquisition Rehabilitation and Resettlement Authority, Meerut, in passing the order impugned.

37. Accordingly, this petition is **dismissed**.

(2025) 9 ILRA 834
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.09.2025

BEFORE

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

Writ C No. 29658 of 2025

Iifl Home Finance Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ashish Malhotra

Counsel for the Respondents:
C S.C.

ISSUE FOR CONSIDERATION

Whether the earlier order dated 28.08.2025, having been obtained by suppressing the operative part of the DRT order, is liable to be recalled?

HEADNOTE

SARFAESI Act, 2002 — Section 14; Constitution of India — Article 226 — Suppression of material facts — Fraud on the Court — Doctrine of clean hands — Principles of suppressio veri and suggestio falsi — Inherent power to recall **Held:** Any petitioner seeking a writ of mandamus has to approach the Court with clean hands and place before the Court all material facts relevant for adjudication of the matter. A petitioner who does not bring on record the relevant true facts does not deserve to get any relief from the Court. Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. Suppression of the operative part of the DRT order directing IIFL Home Finance Limited to give 15 days' prior notice before taking possession of the secured assets, and falsely stating that the borrower has not challenged any proceedings initiated under the SARFAESI Act, 2002 before any forum, i.e., DRT, DRAT and the High Court of Judicature at Allahabad or otherwise before any Court of law, clearly shows that the writ petitioner had suppressed material facts. The entire process of obtaining the impugned order was an abuse of the process of the Court as the petitioner had not come with clean hands and failed to follow the principle of *uberrima fides* — utmost good faith. The order passed on 28.08.2025 was recalled in its entirety.As respondents 6 & 7 were forcibly dispossessed without notice, the Court ordered immediate restoration of possession by IIFL Home Finance Ltd. and District Magistrate, Ghaziabad.[Paras 5, 6, 7] (E-5)

CASE LAW CITED

Bhriguram De v. State of West Bengal, (2018) 6 WBLR (Cal) 78

List of Acts

SARFAESI Act, 2002;
Constitution of India.

List of Keywords

Fraud on Court; Suppressio veri; Suggestio falsi; Uberrima fides; Clean hands doctrine; Suppression of material facts; Misstatement in pleadings; Recall of order; DRT order; Abuse of process; Illegal dispossession; Restoration of possession; Compliance directions.

CASE ARISING FROM

Order dated 28.08.2025 in Writ–C No. 29658 of 2025 passed by the High Court of Judicature at Allahabad.

Appearances for Parties

Advs For Petitioner: Ashish Malhotra
Advs For Respondents: C.S.C.; Dr. Avneesh Tripathi

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

(Civil Misc. Recall Application No. 2 of 2025)

1. Heard learned counsel for the applicant/respondent and Dr. Avneesh Tripathi, learned counsel for the writ petitioner.

2. A recall application has been filed with regard to an order that was passed on August 28, 2025 in a writ petition filed by IIFL Home Finance Limited in Writ-C No. 29658 of 2025 (IIFL Home Finance Limited Versus State of U.P. and others). For the sake of clarity, the entire order is delineated below:-

"1. Heard learned counsel appearing on behalf of the parties.

2. In the present case, order under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') dated January 13, 2025 was passed by the Additional District Magistrate (Finance and Revenue), Ghaziabad for granting possession to the petitioner who is the auction purchaser.

3. In light of the same, the District Magistrate, Ghaziabad being respondent No.2 and the Commissioner of Police, Ghaziabad being respondent No.4 herein, are directed to act in accordance with law and comply with the order passed under Section 14 of the Act within a period of four weeks from the date of receipt of the certified copy of this order, if there is no other legal impediment.

4. With the above directions, the writ petition is disposed of."

3. Learned counsel appearing on behalf of the private respondents being respondent nos. 6 and 7 has filed this application indicating that the order obtained by this Court on August 28, 2025 was obtained by suppression of relevant material facts. He submits that the Debts Recovery Tribunal, Lucknow, had already passed an order on 29.07.2025 specifically directing the respondent (IIFL Home Finance Limited) to give 15 days prior notice before taking possession of the secured assets. He further submits that due to this order, a stay was continuing and this fact was not brought to the knowledge of this Court. Learned counsel appearing on behalf of the applicant further submits that paragraph no. 27 of the writ petition is absolutely false and amounts to perjury. The relevant paragraph is quoted below:

"27. That it is pertinent to mention here that the borrower has not challenged any proceedings initiated under the SARFAESI Act, 2022 before and Forum, D.R.T., D.R.A.T. and the Hon'ble High Court of Judicature at Allahabad or otherwise before and court of law."

4. The Calcutta High Court in **Bhriguram De v. State of West Bengal and others**; (2018) 6 WBLR (Cal) 78, a judgment penned by one of us, after examining a catena of judgments of the Supreme Court, Allahabad High Court (FB) and English Courts, has categorically dealt with the principles of fraud, fraudulent concealment, suppressio veri, suggestio falsi and the doctrine of clean hands. The relevant paragraphs of the said judgment are quoted below:

"13. 'Fraud', according to Black's law Dictionary, 10th Edition, is a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment; a reckless misrepresentation made without justified belief in its truth to induce another person to act; a tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment.

14. "Fraudulent concealment" as defined in Black's law Dictionary, 10th Edition, is the affirmative suppression or hiding, with the intent to

deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal.

15. According to the Law Lexicon, Third Edition (2012), the Latin Maxim "Suppressio veri, suggestio falsi" defines that the suppression of the truth is equivalent to the suggestion of falsehood. The suppression or failure to disclose what one party is bound to disclose to another, may amount to fraud. Where a person is found to be guilty of suppressio veri suggestio falsi for having concealed material information from scrutiny of the Court, he is not entitled for any equitable relief under order 39 of CPC (5 of 1908). [Arbind Kumar Pal v. Hazi Md. Faizullah Khan, AIR 2007 (NOC) 1035 (Pat) : (2006) 1 BUR 430].

16. The maxim that one who comes to Court must come with "clean hands" is based on conscience and good faith. The maxim is confined to misconduct in regard to, or at all events connected with, the matter in litigation. "Clean hands" means a clean record with respect to the transaction with the defendant, and not with respect to any third person.

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18. In S.P Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs reported in (1994) 1 SCC 1 (Coram : Kuldip Singh and PB. Saiuani, JJ.j, the Supreme Court came down heavily on petitioners filing cases based on falsehood and suppression and observed as follows:

"5 The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from a J1 walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation.

6….A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage of another….. A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

20. In Asiatic Engineering Co. v. Achhru Ram reported in AIR 1951 All 746 (Full Bench) [Coram : Malik, C.J., Sapru and V. Bharqaua, JJ., the Court observed that no relief can be granted in a writ petition under Article 226 which is based on misstatement or suppression of material facts. The Court observed in paragraph 51, at page 767 as follows:

"51. In our opmion, the salutary principle laid down in the cases quoted above should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution. A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts."

21. In Indian Bank v. Satyam Fibres (India) Pvt. Ltd. reported in JT (1996) 7 SC 135 [Coram : Kuldip Singh & S. Saghir Ahmad, JJ.], the Apex Court further observed as follows:

"23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court, it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is

misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

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26. Finally, upon examination of the above mentioned judgments, it is axiomatic that any petitioner seeking a writ of mandamus, has to approach the Court with clean hands and to produce before the Court all material facts that are relevant for adjudication of the said matter. The principle of uberrima fides -abundant good faith - as stated in The King v. The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington reported in [1917] 1 K.B. 486 applies in the present case. A petitioner who does not bring on record the relevant true facts before the Court, does not deserve to get any relief from the Court."

5. Upon going through the application filed and perusing the order passed by DRT, it is clear that the writ petitioner had suppressed material facts. The entire process of obtaining the impugned order was an abuse of the process of the Court as the petitioner had not come with clean hands and failed to follow the principle of uberrima fides - utmost good faith.

6. Under these circumstances, we are of the view that the order passed on August 28, 2025 is required to be recalled in its entirety. Furthermore, we have been given to understand by counsel appearing on behalf of the private respondents that they have been removed from their residence without any notice whatsoever and are now on the streets.

7. In light of the above order passed, the order dated August 28, 2025 is hereby recalled. We direct the IIFL Home Finance Limited and the District Magistrate, Ghaziabad to immediately restore the possession of the respondent nos. 6 and 7 and their family members.

8. The recall application is allowed.

9. Registrar (Compliance) of this Court is directed to send a copy of the order passed in Court today, forthwith to the District Magistrate, Ghaziabad and the Commissioner of Police, Ghaziabad for taking necessary steps in this matter.

(Order on Writ Petition)

9. List this matter on October 9, 2025.

10. On the next date, the petitioner is directed to file an affidavit of compliance of the order passed in Court today.

(2025) 9 ILRA 838
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE AVNISH SAXENA, J.

Writ C No. 31054 of 2025

Amir Ahmad ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Meraj Ahmad Khan

Counsel for the Respondents:
C S.C., Pranjal Mehrotra

ISSUE FOR CONSIDERATION

Whether an auction-purchaser of a secured immovable property sold by a secured creditor under the SARFAESI Act, 2002 on an 'as-is-where-is' basis, holding a sale certificate declaring the property to be free from encumbrances, can be denied a new electricity connection by the distribution licensee on the ground of outstanding electricity dues of the previous owner/borrower?

HEADNOTE

Electricity supply – Application for fresh electricity connection – Outstanding electricity dues attached to the premises – Clause 4.3(f)(i) & (viii) of U.P. Electricity Supply Code, 2005 – Duty of purchaser to find out outstanding electricity dues – Clearance of dues mandatory for grant of connection – Property sold by authorized officer under S. 13 of SARFAESI Act, 2002 – Sale on "as-is-where-is" basis – Sale certificate stating property free from all encumbrances – Electricity arrears attach to the property by operation of law – Principle of 'buyer beware' applies – Reliance placed on Supreme Court decision in *K.C. Ninan v. Kerala State Electricity Board*, (2023) 14 SCC 431 – Refusal to grant connection without clearance of dues justified – No ground for interference under Art. 226 – Writ petition disposed of. (Paras 3–8)

HELD

Petitioner was an auction-purchaser of a property sold on an "as-is-where-is" basis, to whom attached the requirement of the phrase "buyer beware. Petitioner, having bid for such a property in an auction conducted by or on behalf of the bank, ought to have made enquiry regarding the charge of unpaid electricity dues attaching to the property by operation of law; In view of clause 4.3(f)(i) and (viii) of the U.P. Electricity Supply Code, 2005, it was the duty of the seller and of the purchaser to find out the outstanding electricity dues up to the date of sale, and both seller and purchaser would be either/or, jointly and severally liable to pay the outstanding electricity dues or obtain a no-dues certificate. Contention of the petitioner that the authorized officer, his vendor, had not consumed electricity was not accepted by the Court. Distribution licensee was held to be justified in refusing fresh electricity connection unless the auction-purchaser paid the dues of the previous owner. (Paras 3–8) (E-5)

CASE LAW CITED

K.C. Ninan v. Kerala State Electricity Board, (2023) 14 SCC 431

List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
Electricity Act, 2003

List of Keywords

Auction-purchaser — SARFAESI Act — As-is-where-is basis — Buyer beware — Outstanding electricity dues — Previous owner dues — Electricity Supply Code, 2005 — Clause 4.3(f)(i) and (viii) — Fresh electricity connection — Clearance of dues — Auction conducted by bank — Refusal of connection — Writ jurisdiction.

CASE ARISING FROM

Refusal by electricity distribution company to grant fresh electricity connection on account of outstanding dues attached to the premises.

Appearances for Parties

Advs For Petitioner: Meraj Ahmad Khan
Advs For Respondents: C.S.C.; Pranjal Mehrotra

(Delivered by Hon'ble Arindam Sinha, J.)

1. Mr. Meraj Ahmad Khan, learned advocate appears on behalf of petitioner and Mr. Pranjal Mehrotra, learned advocate, for respondent nos. 2 to 4 (the supply company). Mr. Raj Mohan Upadhyay, learned advocate, Additional Chief Standing Counsel appears on behalf of State.

2. The writ petition was moved on 9th September, 2025. Paragraph 1 from order made that day is reproduced below.

"1. Mr. Meraj Ahmad Khan, learned advocate appears on behalf of petitioner and submits, his client purchased the property from the authorized officer exercising power under section 13 in Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest (SARFAESI) Act, 2002. He points out, inter-alia, his client holds sale certificate dated 24th April, 2024 saying that the property was made free from all encumbrances and sold to his client. He applied for electric connection but it is not being given on the supply company holding out, there are arrear dues attached to the premises."

3. Today, Mr. Mehrotra relies on clause 4.3 (f) (i) and (viii) in chapter 4 of U.P. Electricity Supply Code, 2005, reproduced below.

"(i) ***It will be the duty of the seller and of the purchaser to find out the outstanding electricity dues up to the date of sale, and*** *further that both seller and* ***purchaser will*** *be either/or, jointly and severally* ***liable to pay the outstanding electricity dues/ obtain No dues certificate.***

.....

(viii) The application shall be processed by licensee on clearing of dues."

(emphasis supplied)

4. Mr. Mehrotra also relies on judgment of the Supreme Court in **K.C. Ninan Vs. Kerala State Electricity Board** reported in **(2023) 14 SCC 431**, inter alia, paragraph 117 reproduced below.

"117. In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby the Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new infrastructure and maintaining the existing infrastructure. In the absence of such a provision, the Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers."

He submits, there is no ground for interference. The writ petition be dismissed.

5. In reply Mr. Khan submits, **K.C. Ninan** (supra) does not apply to his client's case, who is bonafide purchaser for value from the authorized officer of the bank. His client's vendor did not consume any electricity. As such, there cannot be any claim of the supply company, to result in a charge on the property by operation of law. The supply company has not been able to show any bill raised on the authorized officer for electricity consumed by occupation of the property, sold to his client. In any event, he reiterates, the

property was sold to his client free from all encumbrances known to his vendor.

6. There is substance in contention of the supply company made upon reliance on clause 4.3 (f) (i) and (viii). Petitioner is auction-purchaser of a property dealt with under law as being secured property of a borrower, who had defaulted on repayment. As such the property was sold on "as- is-where-is" basis. To petitioner attaches the requirement of the phrase 'buyer beware'. Petitioner having bid for such a property, in auction conducted by or on behalf of the bank, ought to have made such enquiry regarding charge of unpaid electricity dues attaching to the property, by operation of law. His contention that the authorized officer, his vendor, had not consumed electricity must be seen as cannot be sustained by reason of declaration of law made by the Supreme Court in **K.C. Ninan** (supra) in fact situation covering petitioner. Paragraph 1 from the judgment is reproduced below.

"1. The nineteen cases in this batch of appeals follow a similar pattern of facts. ***The supply of electricity was discontinued due to the failure of the previous owners to pay the dues for consumption of electricity on the premises.*** *The previous owners had borrowed money or raised loans on the security of their premises. In some cases, the erstwhile owner went into liquidation.* ***The premises were sold in auction-sales generally on an "as-is-where-is" basis. The new owners, who purchased the properties in auction, applied for new electricity connections for the premises to which electricity had been disconnected for failure to pay the dues. The Electric Utilities refused to provide an electricity connection unless the auction-purchaser paid the dues of the previous owner. This refusal was derived from powers conferred under*** *subordinate legislations, notifications,* ***Electricity Supply Codes*** *or State Regulations.* ***The denial of electricity supply resulted in the institution of petitions under Article 226 before the High Court, leading to the judgments which are in appeal."***

(emphasis supplied)

7. Petitioner is required under law to comply with, inter alia, aforesaid provision in clause 4.3, to obtain electricity connection in the property he has purchased.

8. The writ petition is **disposed of**.

(2025) 9 ILRA 841
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.09.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002280 of 2021

Smt. Maya Devi ...Petitioner
Versus
Collector Sitapur & Ors. ...Respondents

Counsel for the Petitioner:
P.N. Dwivedi, Rama Pati Shukla, Shravan Kumar

Counsel for the Respondents:
C S.C., G.P. Pandey, R.N. Gupta

ISSUE FOR CONSIDERATION

Whether cancellation of lease under Section 198(4) of the U.P. Z.A. & L.R. Act, 1950 could be sustained when passed without serving mandatory notice and beyond the statutory limitation period?

HEADNOTE

U.P. Zamindari Abolition & Land Reforms Act, 1950 — Section 198(4), 198(5) & 198(6) — Mandatory show-cause notice — Limitation — Principles of natural justice — Earlier proceedings under Section 202 attained finality — Order passed ex parte without jurisdiction — Not sustainable

Held: Prior to cancellation of allotment of lease, the person adversely affected is entitled to be issued a show cause notice as provided under Section 198(5) of the Act. Beyond the period of limitation, no notice can be issued under Section 198(4) of the Act. In case there is a specific averment regarding violation of show cause notice, the statement of fact is treated to be true. In the present case, the lease was granted to the petitioner's father in 1960. A regular suit under Section 202 was filed which was dismissed on 12.05.1988 which attained finality. Initiation of proceedings under Section 198(4) after more than four decades, without issuance of mandatory notice and beyond limitation, is in clear violation of the principles of natural justice and therefore stands vitiated. In absence of any counter affidavit, the unrebutted pleadings are deemed to be admitted. The impugned order has been passed in violation of the principles of natural justice and beyond the time limit prescribed under law; therefore, the impugned order dated 27.04.2001 is not sustainable in the eyes of law and is liable to be set aside. Writ petition allowed. **[Paras 19–21]** (E-5)

CASE LAW CITED

Suresh Giri and Others v. Board of Revenue, U.P., Allahabad and Others, Writ-B No. 4570 of 2010

Jiya Ram and Others v. State of U.P. and Others, (2012) 115 RD 372

Sambhunath Rai v. Board of Revenue, U.P. and Others, Writ-B No. 10829 of 1984 (decided on 15.11.2022)

Assistant Commissioner of State Tax v. Commercial Steel Ltd., (2022) 16 SCC 447

List of Acts

U.P. Zamindari Abolition & Land Reforms Act, 1950;
Constitution of India

List of Keywords

Section 198(4) cancellation; Limitation under Section 198(6); Principles of natural justice; Ex parte proceedings; Non-traverse

CASE ARISING FROM

Order dated 27.04.2001 passed by Collector, Sitapur in Case No. 34 under Section 198(4) of the U.P. Z.A. & L.R. Act, 1950.

Appearances for Parties

Advs For Petitioner: P.N. Dwivedi, Rama Pati Shukla, Shravan Kumar

Advs For Respondents: C.S.C.; G.P. Pandey; R.N. Gupta

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri R.P. Shukla, learned counsel for petitioner and learned Additional CSC for the respondent - State.

2. Notice was issued to respondent - gaon sabha but no one appears and notice has been found deemed to be sufficient.

3. By means of present writ petition, the petitioner has assailed the order dated 27.04.2001 passed by Collector, Sitapur in case No.34 under Section 198 (4) UPZA & LR Act, 1950.

3. Respondent Nos.2 to 9 instituted case No.34; Hiralal vs. Smt. Maya Devi and other before the Collector, Sitapur under Section 198 (4) of 1950 Act for cancelling the lease granted in favour of the petitioner in respect of gata No.293 area 1.60 dismal situated in village Gyan sagar, H/o Mishrikh Rural, Pargana and Tehsil Mishrikh District Sitapur.

4. The Collector, Sitapur called for the report from the District Government Counsel (DGC) Revenue, who submitted his report dated 18.04.2001 mentioning therein that the case should be filed under Section 202 of the Act, 1950 and the suit

under Section 198 (4) of the Act, 1950 was not maintainable.

5. The Collector proceeded in ex parte manner under Section 198 (4) of the Act without issuing notices to the petitioner. The patta / lease was granted in favour of Late Kalyan, father of the petitioner on 09.12.1960. The petitioner is only issue of Late Kalyan, therefore, she succeeded on the land and her name was recorded in the revenue records. Late Kalyan has paid land revenue in his lifetime and after his death, the petitioner being successor / heir / legal representative is entitled to be heard before passing the order under Section 198 (4) of the Act, 1950. The provisions of Section 198 (4) of the Act, 1950 are mandatory and show cause notice is necessary to be served in the instant case.

6. The then Gram Pradhan Sri Putan Singh instituted a suit No.2/3/4/5 under Section 202 of the Act of 1950 for eviction of the petitioner from the land in dispute before the Sub Divisional Officer / Deputy Collector, Mishrikh, District Sitapur. The notices were issued to the petitioner by the SDO and the petitioner appeared and filed written statement. The parties adduced their evidence and the suit was rejected vide judgment and order dated 12.05.1988 by the SDO vide order dated 12.05.1988.

7. Submission of learned counsel for the petitioner is that the Gram Pradhan or any person of the village has not assailed the order dated 12.05.1988 before any competent authority. Consequently, the order has become final and the issue cannot be re-agitated that too after lapse of more than 40 years. Hence, the proceedings under Section 198 (4) of the Act of 1950 were not maintainable.

8. He next submitted that the lease was granted to petitioner's father Late Kalyan was tested in the above said suit instituted under Section 202 of the Act of 1950 and it was found that he was quite eligible to get the lease. The question of eligibility cannot be tested after the lapse of more than 40 years.

9. He next submitted that the proceedings under Section 202 of the Act are regular proceedings, hence it has binding effect upon the proceedings instituted under Section 198(4) of the Act of 1950 and the impugned order dated 27.04.2001 passed by the Collector is illegal.

10. He next submitted that the gram sabha of the State of U.P. has filed no counter affidavit rebutting the averments made in the writ petition. The principle of non traverse shall be applicable and the averments made in the writ petition shall be deemed to be true.

11. His last submission is that the application beyond the limitation provided under Section 198 (6) of the Act of 1950 cannot be instituted under Section 198 (4) of the Act of 1950. In support of his submissions, he placed reliance upon a judgment in the case of **Suresh Giri and ors. Vs. Board of Revenue, U.P. Allahabad and ors.; Writ B No.4570 of 2010.** The principles laid down by this Court in the case of **Suresh Giri (Supra)**, has been relied upon in the case of **Jiyaram and ors. Vs. The State of U.P. and Ors.; (2012) 115 RD 372**. The judgment has further been relied upon in the case of **Shabhunath Rai Vs. Board of Revenue**, U.P. and ors. This Court has further been pleased to hold that the proceedings under Section 198 (4) of the

Act of 1950 cannot be instituted beyond the limitation.

12. The provisions of Section 198 (4) of the Act of 1950 are mandatory and show cause notice is necessary to be served but in the instant case specific averment has been made in paragraph 4 of the writ petition, which has not been denied by filing counter affidavit. Section 198 (5) of the Act of 1950 shall not be applicable in the instant case for the reason that no case was pending against the petitioner on 18.08.1980 before any court or authority. Hence, it was necessary to serve show cause notice before passing the impugned order.

13. It is also mandatory that show cause notice under Section 198(5) of the Act of 1950 may be issued within 7 days from the date of allotment was made. Lease to late Kalyan was granted on 09.12.1960, therefore, the show cause notice must have been issued within seven days, hence, the impugned order dated 27.04.2001 is illegal, arbitrary and having been passed without complying the principles of natural justice.

14. A query was made to learned counsel for the petitioner that against the order passed under Section 198 (4) on 27.04.2001, there is alternative remedy to approach Board of Revenue. On the query, learned counsel for the petitioner placed reliance upon a judgment in the case of **Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited; (2022) 16 SCC 447**, wherein it was held as under:

"10. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation."

He again placed reliance upon a judgment in the case of **Suresh Giri (Supra)**, wherein it has been held as under:

"The Collector is empowered under Section 198 (4) of the Act of his own motion or on the application of any person aggrieved to cancel the allotment of the Gaon Sabha land made in favour of any person as well as the lease, if any, if he is satisfied that the allotment made is irregular. The power of cancellation of allotment of land so made cannot obviously be exercised in violation of the principles of natural justice and it is imperative to provide an opportunity of hearing to the person concerned i.e. the allottee of the land before passing an order of cancellation. It is with this view that section 198 (5) of the Act specifically provides for issuing / sending a show cause notice upon the person concerned before passing an order of cancellation of allotment or lease."

Further reliance has been placed in the case of **Jiya Ram & 16 others Vs. State of U.P. and others; (2012) 115 RD 372.** Relevant portion of the judgment is reproduced below:

"Specific plea of limitation was raised before the Collector in terms of Section 198(6) of the Act in which it was specifically stated that no proceedings can be initiated under Section 198(4) of the Act

beyond November 1987. Addl. Collector has not addressed himself on this issue and has cancelled the allotment only on the ground that there is no prior approval in favour of the petitioners. By analysing the import of the judgment, it be seen that the Collector has misdirected itself in not addressing the issue of limitation."

Further reliance has been placed in the case of Sambhunath Rai Vs. Board of Revenue; Writ B No.10829 of 1984 decided on 15.11.2022. Relevant portion of the judgment is as under:

"10. Since the petitioner was granted patta in the year 1966 and have matured their right in respect to plot in dispute, as such, fresh consideration of patta cancellation application after expiry of more than 56 years, will ab an abuse of process of law.

12. This writ petition was entertained in the year 1984 and the operation of the order passed by the Board of Revenue was stayed but no counter affidavit has been filed by the State or the Gaon Sabha till date, as such, there is no option except to accept the averment made in the writ petition."

15. On perusal of instant paragraph, it is evident that alternative remedy is no bar where there is violation of principles of natural justice.

16. On the other hand, learned Additional CSC without filing counter affidavit vehemently opposed the arguments advanced by learned counsel for the petitioner and submitted that the proceedings initiated against the petitioner under Section 198 (4) is without lease and pond has been leased out, which is not proper in the eyes of law in view of judgment in the case of **Hinch Lal Tiwari**.

17. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the petitioner.

18. For deciding the controversy involved in the matter, relevant portion of Section 198 (4) of U.P. Z.A. & L.R. Act is being quoted below:

"198. Order of preference in admitting persons to land under Sections 195 and 197.

(1) In the admission of persons to land as [bhumidhar with non-transferable rights] [Substituted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] or asami under Section 195 or Section 197 (hereinafter in this section referred to as allotment of land) the Land Management Committee shall, subject to any order made by a Court under Section 178 observe the following order of preference :

(a) landless widow, sons, unmarried daughters or parents residing in the circle of a person who has lost his life by enemy action while in active service in the Armed Forces of the Union;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) a landless agricultural labourer residing in the circle and belonging to any one of the following categories in the order of preference:-

(i) persons belonging to the Scheduled Castes or the Scheduled Tribes;

(ii) persons belonging to Other Backward Classes;

(iii) persons belonging to the general category living below poverty line.];

(d) any other landless agricultural labourer residing in the circle;

(e) a bhumidhar [* *] [Word 'sirdar' omitted by U.P. Act No. 6 of 1978 (w.e.f 2101.1978).] or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);*

(f) a landless person residing in the circle who is retired, released or discharged from service other than service as an officer in the Armed Forces of the Union;

(g) a landless freedom fighter residing in the circle who has not been granted political pension; and

(h) any other landless agricultural labourer, not residing in the circle, but residing in the Nyaya Panchayat circle referred to in Section 42 of the United Provinces Panchayat Raj Act, 1947 and belonging to any of the following categories in the order of preference:-

(i) persons belonging to the Scheduled Castes or the Scheduled Tribes;

(ii) persons belonging to Other Backward Classes;

(iii) persons belonging to the general category living below poverty line.]

Explanation. - For the purposes of this sub-section-

(1) 'landless' refers to a person who or whose spouse or minor children hold no land as bhumidhar, [* *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] or asami and [* * *] [Omitted by U.P. Act No. 30 of 1975.] also held no land as such within two years immediately preceding the date of allotment; and*

(2) agricultural labourer' means a person whose main source of livelihood is agricultural labour;

(3) 'Freedom-Fighter' means an inhabitant of Uttar Pradesh who is certified by the Collector to have participated in the National struggle for freedom during the period between 1930 and 1947 and who in connection with such participation, is similarly certified to have-

*(a) undergone a sentence*of imprisonment for a period of at least two months; or*

(b) been in jail for a period of at least three months by way of preventive detention or as an undertrial; or

(c) been subjected to at least ten stripes in execution of a sentence of whipping; or

(d) been declared an absconding offender; or

(e) suffered a bullet injury;

and includes a person who was involved in the Peshawar-Khand or who was a recognised member of the Indian National Army or former India Independence League; but does not include a person who was granted pardon on account of his tendering apology or expressing regret for such participation.

(4) Other Backward Classes' means the Backward Classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act No. 4 of 1994).

(5) 'Persons of General Category living below poverty line' means such persons as may be determined from time to time by the State Government.]

*(2) [* * *]*

(3) [The land that may be allotted under sub-section (1) shall not exceed-

(i) in the case of a person falling under Clause (e) such area as together with the land held by him as bhumidhar [* *] or asami immediately before the allotment would aggregate to 1.26 hectares (3.125 acres);(ii) in any other case, an area of 1.26 hectares (3.125 acres)].(4) The [Collector] [Substituted by U.P. Act No. 20 of 1982 (w.e.f. 18.08.1980).] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any*

[(4-A) [* *]*

(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives :

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector or any other Court or authority on August 18, 1980.

(6) Every notice to show' cause mentioned in sub-section (5) may be issued-

(a) in the case of an allotment of land made before November 10, 1980, (hereinafter referred to as the said date), before the expiry of a period of [seven years] [Substituted by U.P. Act No. 24 of 1986 and shall be deemed always to have been substituted.] from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, which ever be later]

(7) Where the allotment or lease of any land is cancelled under sub-section (4) the following consequences shall ensue, namely-

(i) the right, title and interest of the allottee or lessee or any other person claiming through him in such land shall case and the land shall revert to the Gaon Sabha;

(ii) the [Collector] [Substituted by U.P. Act No. 27 of 2004 (w.e.f. 23.08.2004).] may direct delivery of possession of such land forthwith to the Gaon Sabha after ejectment of every person holding or retaining possession thereof and may for that purpose use or cause to be used such force as may be necessary.

(8) Every order made by the Collector under sub-section (4) shall, subject to the provisions of Section 333, be final.]

(9) Where any person has been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before the said date and such admission was made with the previous approval of the Assistant Collector-in-charge of the sub-division in respect of the permissible area mentioned in sub-section (3), then notwithstanding anything contained in other provisions of this Act or in the terms and conditions of the allotment or lease under which such person was admitted to that land, the following consequences shall, with effect from the said date ensure, namely-

(a) the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year and the allotment or lease of the land to the extent mentioned above shall not be deemed to be irregular for the purposes of sub-section (4);

(b) the proceedings, if any, pending on the said date before the Collector or any other Court or authority

for the cancellation of the allotment or lease of such land, shall abate.]"

19. On perusal of aforesaid provision, it is evident that show cause notice prior to passing of the order is necessary to be given within a week to the aggrieved person and non providing of opportunity of hearing vitiates the order passed under Section 198 (4) of the Act.

20. As per judgment in the case of **Suresh Giri (Supra)**, it has been held that prior to cancellation of allotment of lease, the person adversely affected is entitled to issue show cause notice as provided under Section 198 (5) of the Act. In the case of **Jiya Ram & 16 others (Supra)**, it has been held that beyond time of limitation no notice can be issued under Section 198(4) of the Act. In the case of **Sambhunath Rai (Supra)**, it has been held that in case there is specific averment of violation of show cause notice, statement of fact is treated to be true.

21. In view of facts and circumstances narrated above, I am of the considered opinion that the impugned order has been passed in violation of principles of natural justice and beyond time limit prescribed under law, therefore, the impugned order dated 27.04.2001 is not sustainable in the eyes of law and is liable to be set aside.

22. Accordingly, the order dated 27.04.2001 is hereby quashed.

23. The writ petition succeeds and is **allowed**.

(2025) 9 ILRA 848
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.09.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1003912 of 2005

Jhinku ...Petitioner
Versus
Apar Ayuktprashashan Faizabad Mandal & Ors. ...Respondents

Counsel for the Petitioner:
R.P. Maurya, Mukul Misra, Ninnie Shrivastava

Counsel for the Respondents:
C S.C., Azad Khan, R.N. Gupta

ISSUE FOR CONSIDERATION

Whether the orders passed by the revenue authorities rejecting the petitioner's application for correction of the map of Gata No. 471 were vitiated on account of non-consideration of the Naib Tehsildar's spot inspection report dated 18.08.1991 ?

HEADNOTE

Correction of map – U.P. Land Revenue Act, 1901 – S. 28 – Report of Naib Tehsildar after spot inspection – Mandatory consideration of material evidence – Revenue authorities noticed the report but failed to consider it or return any finding thereon – Non-application of mind – Orders vitiated – Impugned orders quashed – Writ petition allowed. *(Paras 31–46)*

HELD

An application was moved by the petitioner for correction of the map in accordance with the Khatauni. The Naib Tehsildar conducted a spot inspection and submitted a report dated 18.08.1991. Though the said report was noticed by respondent no. 2, no finding was returned thereon and the petitioner's application was rejected. Non-consideration of relevant and material evidence vitiates both the original and the revisional orders. The impugned orders were quashed and the writ petition was allowed. *(Paras 3,9)* (E-5)

CASE LAW CITED

List of Acts

U.P. Land Revenue Act, 1901

List of Keywords

Correction of map — Revenue records — Spot inspection — Naib Tehsildar's report — Non-consideration of evidence — Non-application of mind — Apparent illegality

CASE ARISING FROM

Orders dated 19.04.2005 passed by the Commissioner, Faizabad Division and 09.02.1999/09.02.2019 passed by the revenue authority concerned.

Appearances for Parties

Advs For Petitioner: R.P. Maurya; Mukul Misra; Ninnie Shrivastava

Advs For Respondents: C.S.C.; Azad Khan; R.N. Gupta

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Ms. Ninnie Shrivastava, learned counsel for the petitioner and learned Standing Counsel for the respondents-State.

2. By means of the present writ petition, the petitioner is challenging the orders passed by the respondent nos.1 and 2 dated 19.4.2005 and 9.2.2019 (Annexures-1 and 2 to the writ petition) respectively with further prayer for issuance of a writ in the nature of Mandamus directing the respondents to correct the map of Gata No.471 as per Khatuani within a period specified by this Court.

3. Factual matrix of the case is that the petitioner is transferable right of Khata No.163/ Gata No.471, area 2 bigha, 2 bishwa, 17 bishwansi, on which the petitioner is using the land for agricultural purpose which was made available to the petitioner during the course of consolidation proceedings. On measurement as per the Khatuani, the land was found short, therefore an application was moved by the petitioner to correct the map in accordance with the Khatauni. During the course of consolidation proceeding, Gata No.471 was measured in presence of Lekhpal and Gata No.471 during course of measurement was found short. Upon knowing the fact in regard to Gata No.471 to be short, the petitioner moved an application under Section 28 and a case was registered as Case No.151/4 before the respondent no.2, on which Naib Tehsildar, Akbarganj, on spot inspection, submitted a report before the respondent no.2 on 18.8.1991. Respondent no.2, taking into notice of the report submitted by Naib Tehsildar on 18.8.1991 and ignoring the report, rejected suit filed by the petitioner vide order dated 9.2.1999, against which the petitioner filed Revision No.1116 under Section 219 U.P. Revenue Act before the Commissioner, Faizabad Division, Faizabad which has also been rejected vide order dated 16.4.2005. Feeling aggrieved by both the orders, the petitioner has preferred the present writ petition under Article 226 of the Constitution of India.

4. On bare perusal of the order passed by the respondent no.2, it is evident that he has taken notice of the report of Naib Tehsildar dated 18.8.1991, but nowhere considered the same and rejected the suit filed by the petitioner. The Revisional Court has also failed to appreciate the report of the Naib Tehsildar dated 18.8.1991 and has also rejected the claim set up by the petitioner.

5. Submission of learned counsel for the petitioner is that due to non-consideration of the report of the Naib Tehsildar dated 18.8.1991, impugned orders suffer from apparent illegality and are liable to be set aside.

6. Next submission of learned counsel for the petitioner is that notice was taken

into consideration, but no finding has return on the report submitted by the Naib Tehsildar on 18.8.1991 due to which the orders are per se illegal.

7. On the other hand, learned Standing Counsel has vehemently has opposed the submissions advanced by learned counsel for the petitioner and has submitted that the report was taken into consideration and thereafter, the orders were passed, therefore the orders do not suffer from any infirmity or illegality and the writ petition is liable to be dismissed.

8. Having heard learned counsel for the parties I have perused the material available on record.

9. On perusal of the order of the respondent no.2, it is evident that he has taken notice of the report of the Naib Tehsildar dated 18.8.1991, but no finding has return nor it was taken into consideration while passing the impugned order and due to non-consideration of the report, the impugned order suffers from apparent illegality and is liable to be set aside.

10. Revisional Authority has also ignored that the report was submitted which was taken into notice while passing the order by the respondent no.2 but that to was not taken into consideration while passing the order impugned, therefore the order of the Revisional Authority is per se illegal and is liable to be set aside.

11. Considering in totalities of facts and circumstances of the case, I am of the considered opinion that due to non-taking into consideration the report of Naib Tehsildar dated 18.8.1991, the impugned orders suffer from apparent illegality and is liable to be quashed by this Court.

12. Accordingly, orders passed by the respondent nos.1 and 2 dated 19.4.2005 and 9.2.2019 (Annexures-1 and 2 to the writ petition) are hereby quashed. The writ petition succeeds and is **allowed**.

14. No order as to costs.

(2025) 9 ILRA 850
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ Tax No. 389 of 2023

M/S Safecon Lifescience Private Limited ...Petitioner

Versus

Additional Commissioner Grade 2 & Anr. ...Respondents

Counsel for the Petitioner:
Suyash Agarwal, Sr. Advocate

Counsel for the Respondents:
C.S.C.

Issue for Consideration

Matter pertains to whether proceedings under S. 74 of the UPGST Act could be validly initiated against the petitioner for alleged wrongful Input Tax Credit (ITC), despite (i) actual movement of goods, (ii) payment of tax through banking channels, (iii) GSTR-1 / GSTR-3B reflection, and (iv) absence of any finding of "fraud", "wilful mis-statement" or "suppression of facts".

Headnotes

U.P. Goods and Services Tax Act, 2017 - S. 74 - Initiation of proceedings - Requirement of fraud, willful mis-statement or suppression of facts - Show cause notice and adverse inference -

Material evidence and due process – Proceedings under S. 74 of the Act can only be initiated if there is a case of fraud or willful mis-statement or suppression of fact to evade payment of tax and in absence thereof proceedings under S. 74 of the Act cannot be initiated - S. 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or willful mis-statement or suppression of facts to evade tax - An incorrect statement cannot be equated with a willful misstatement; the latter implies making of an incorrect statement with the knowledge that the statement was not correct.

Input Tax Credit (ITC) - Burden of Proof - Genuine Transactions – Once actual movement of goods as well as payment of tax by the respondent authorities have been proved by the petitioner to which no rebuttal has been brought on record at any stage, proceedings under S. 74 of the Act cannot be justified Recipient purchaser cannot be denied ITC merely on the ground that the supplier made purchases from different firms who did not deposit the tax, without recording a finding that the petitioner was involved in any irregularity.

Natural Justice - Reliance on Intelligence Reports - Information sent by the Central Intelligence Unit must be verified by the authority before using the same against the registered dealer - It is the duty of the officers to verify facts with all angles before being used against the registered dealer - Report used against the petitioner must be provided to the petitioner; failure to provide material used against the petitioner is violative of principles of natural justice.

Held: Proceedings under S. 74 of the UPGST Act require fraud, wilful misstatement, or suppression of fact; cannot be initiated merely on ground of cancellation of registration of supplier or non-reconciliation in GSTR-2A unless supported by material evidence - When movement of goods, payment of tax, returns, and all compliance documents are provided, and there is no cogent rebuttal, adverse inference against ITC not justified - Reports or information from Intelligence Units must be verified by authorities before acting - No material provided to petitioner nor finding recorded that supplier was involved in irregularity; authority acted only on basis of unverified information - Circular dated 13.12.2023 clarified proceedings under S. 74 can only be for fraud/wilful misstatement or suppression - Supreme Court in Continental Foundation JV reiterated 'suppression' or 'misstatement' must be wilful and accompanied by intent to evade duty/tax - In present case, authorities failed to record findings or provide evidence of fraud, wilful misstatement or suppression; orders are unsustainable and quashed. (Paras 11,12,13,14,15,16,17,18,19,20) (E-7)

Case Law Cited

M/s Khurja Scrap Trading Company vs. Additional Commissioner Grade 2 (Appeal) **(2025: AHC 151783);** *Continental Foundation Joint Venture Holding Nathpa, H.P. v. CCE, Chandigarh-I* **[(2007) 10 SCC 337]**

List of Acts

UPGST Act, 2017; CGST Act, 2017; Central Excise Act, 1944

List of Keywords

Fraud; willful mis-statement; suppression of fact; actual movement of goods; banking channel; intelligence report; with closed eyes; registration cancelled; input tax credit (ITC); erroneously availed; material not provided; proper officer

Case Arising From

ORIGINAL JURISDICTION:
Writ Tax No. 389 of 2023, challenging orders:
20.12.2022 – Additional Commissioner Grade-2 (Appeal)-II, State Tax, Agra
12.1.2022 – Deputy Commissioner, Commercial Tax, Agra

Appearances for Parties

Advs. for the Appellant:
Sri R.R. Agarwal (Senior Counsel), Sri Suyash Agarwal
Advs. for the Respondents:
C.S.C. (Chief Standing Counsel) / Learned ACSC

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Sri R.R.Agarwal, learned senior counsel assisted by Sri Suyash Agarwal, learned counsel for the petitioner and learned ACSC.

2. Present writ petition has been filed seeking quashing the order dated 20.12.2022 passed by the Additional Commissioner, Grade-2 (Appeal)- II State Tax, Agra, respondent no.1 as well as the order dated 12.1.2022 passed by the Deputy Commissioner, Commercial Tax, Agra, respondent no.2.

3. Learned counsel for the petitioner submits that the petitioner is engaged in trading and manufacturing business, mainly of all kinds of medicines/ pharma products on wholesale basis. He further submits that the petitioner purchased medicines/ pharma products from M/s Unimax Pharma Chem, Purana Taluka Bhiwandi, Thane and at the time of supply it was in existence and duly registered with the GST department as well as Drug License Holder. He further submits that the transaction of purchases made by the petitioner from the Maharashtra Party for the tax period April, 2021 which was against the Tax Invoice dated 30.4.2021 and E-way bill and transport bilty of M/s Vinay Road Lines Pvt. Ltd. He further submits that the whole payments of purchases were made through banking channel and the supplier also submitted his GSTR-1 and GSTR-3B within the time on GST Portal after making due tax on the turnover made by the supplier.

4. Learned senior counsel for the petitioner further submits that the respondent no.2 issued show cause notice under section 74 of the UPGST Act on the ground that the petitioner has claimed ITC through GSTR-3B for the tax period April, 2021 on the purchase made from M/s Unimax Pharma Chem which has itself got its registration cancelled as such the petitioner has incorrectly claim ITC. He further submits that the petitioner submitted a detailed reply to the show cause notice which has been rejected by the respondent no. 2 on the ground that the recipient purchaser can claim the ITC only when the supplier has deposited the collected tax with the department as per Section 16(2)(c) of the Act. He further submitted that the respondent no. 2 has recorded incorrect finding that the petitioner has not made actual purchases and there was a difference in the bill reflected in GSTR-2A and the bill disclosed by the petitioner.

5. Learned senior counsel further submits that feeling aggrieved by the order passed by the respondent no.2 the petitioner preferred an appeal which has also been dismissed on 20.11.2022 by the respondent no.2 on the ground that the supplier M/s Unimax Pharma Chem in the month of March, 2021 made purchases from different firms who did not deposit the tax, therefore, it claimed forged ITC He further submits that the appellate authority has erred in holding that the purchases made by the supplier from the different firms who did not deposit tax on sales made by them to the M/s Unimax Pharma Chem as such the petitioner cannot claim ITC on the supply made by M/s Unimax Pharma Chem. He further submits that the petitioner has made the payment of Tax as per tax invoices to the supplier and the supplier has deposited the tax as reflected in GSTR-3B, therefore, no adverse inference can be drawn by making RITC to the ITC claimed by the petitioner.

6. Learned senior counsel further submits that specific arguments were raised before the authority which was noticed but

no finding has been recorded. He further submits that all materials were produced before the authority and are available before the first appellate authority and the appellate authority as well, have been filed before this Court. He further submits that the movement of goods were duly supported by the purchase invoice, selling dealer tax invoice, e-way bill, purchase order, transport bilty and the payments were made through banking channel. He further submits that not only this the GSTR return was filed and supplies were done which is also reflected in GSTR-1A as well as in GSTR-2A. Further the same has also been reflected in GSTR-3B on the portal of the petitioner. He further submits that until and unless the tax is paid, GSTR-3B will not reflect.

7. He further submits that a circular has been issued on 13.12.2023 which specifically provides that under section 74 of the CGST Act proceedings can only be initiated if there is a case of fraud or willful mis-statement or suppression of fact to evade payment of tax and in absence thereof proceedings under section 74 of the Act cannot be initiated. In support of his arguments he has relied upon a judgment of this Court in Writ Tax No. 743 of 2023 M/s Khurja Scrap Trading Company vs. Additional Commissioner Grade 2 (Appeal) and another (2025: AHC 151783).

8. Per contra, learned ACSC supports the impugned order. He further submits that supplying dealer of the petitioner M/s Unimax Pharma Chem has shown purchases from the firm whose registration has been cancelled much before, therefore, once supplying dealer purchase is doubted and it could not be proved on record, the benefit of ITC cannot be accorded to the petitioner. Hence the proceeding has rightly been initiated against the petitioner.

9. After hearing the learned counsel for the parties the Court has perused the record.

10. Record shows that notice under section 74 of the Act was issued to the petitioner on the basis of some information being received from the office of Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone that M/s Unimax Pharma Chem from whom purchases have been made by the petitioner has wrongly been shown and on the said premise proceedings were initiated.

11. The record further shows the petitioner submitted its specific reply on all points bringing on record the material of actual movement of goods, payment of tax through banking channel as well as filing of return which was reflected in GSTR-3B of both - petitioner and supplier but no weightage was given on order under section 74 of the Act was passed on 13.10.2021. Specifically taking all grounds in appeal which were noticed in the impugned order but neither any weightage was given nor any material was brought to rebut the same while rejected the appal. The petitioner has specifically brought on record all materials with regard to movement of goods, payment through banking channel. Further returns filed by the petitioner and the supplier were brought on record and GSTR-3B was also reflected on the portal showing payment of tax. This vital materials have neither been disbelieved/ reversed nor any cogent material rebutting the same have been brought on record.

12. Once actual movement of goods as well as payment of tax by the respondent authorities have been proved by the petitioner to which no rebuttal has been brought on record at any stage, proceedings under section 74 of the Act cannot be justified.

13. The order of the first appellate authority has been passed only on the basis of the information sent by office of the Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone with closed eyes. The information sent by the Central Intelligence Unit must be verified by the authority before using the same against the registered dealer.

14. The record shows that the allegations were made against M/s Unimax Pharma Chem from whom purchases were made, that its registration was cancelled earlier. However, no finding has been recorded that M/s Unimax Pharma Chem, who sold the goods in question to the petitioner was involved in any irregularity. The total quantity purchased by M/s Unimax Pharma Chem was sold to the petitioner and no finding has been recorded that the alleged parties which supplied goods to M/s Unimax was the only sale made to it. The record does not confirms that M/s Unimax Pharma Chem made sale only to the petitioner. It is the duty of the officers to verify facts with all angles before being used against the registered dealer. Record further shows that the report used against the petitioner has neither been provided to the petitioner nor material used against the petitioner was ever provided which ought to be provided to the petitioner.

15. GST regime has been brought by the Central Government for ease of business in the country but the revenue officers are bend upon to act against the very theme/ intend of it. When it was noticed by the Government that under the garb of Section 74 of the Act various dealers are being harassed, issued a circular dated 13.12.2023 where it has specifically been stated that proceedings under section 74 of the Act can be initiated if there is a fraud or willful mis-statement or suppression of fact to evade payment of tax and not otherwise.

16. This Court had an occasion to consider such facts which is identical to the facts of the present case in M/s Khurja Scrap Trading Company (supra). Relevant paragraph nos. 11,12 and 13 of the said judgment is quoted below:

"11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-

3.2 In this regard, section 74 (1) of CGST Act reads as follows:

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

3.3. From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the

part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. “

12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in Suraj Impex (India) Private Limited (supra) and the judgement of this Court in S/s Agrawal Rolling Mills (supra), strict compliance of the circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.

13. The record further shows that at the time when the transaction took place, the selling dealer, i.e., M/s Unique Trading Company, was duly registered. The record further shows that the selling dealer has duly uploaded GSTR - 1/1FF and GSTR 3-B. Once, at the time of when transaction took place, the selling dealer was registered, no adverse view should have been taken against the petitioner as held by this Court in Solvi Enterprises (supra) and R.T. Infotech (supra). "

17. Record shows that neither any finding with regard to fraud has been noticed nor mis-statement nor suppression of fact has been recorded at any stage.

18. Section 11-A of the of the Central Excise Act, 1944 is having analogous provision to Section 74 of the UPGST Act. The Apex Court in the case of Continental Foundation Joint Venture Holding, Nathpa, H.P. vs. Commissioner of Central Excise, Chandigarh-I [(2007) 10 SCC 337] had an occasion to consider the expression 'suppression', 'wilful misstatement' and has held as under:

11. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.

12. The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

13. Factual position goes to show the Revenue relied on the circular dated 23.5.1997 and dated 19.12.1997. The circular dated 6.1.1998 is the one on which appellant places reliance. Undisputedly, CEGAT in Continental Foundation Joint Venture case (supra) was held to be not correct in a subsequent larger Bench judgment. It is, therefore, clear that there was scope for entertaining doubt about the view to be taken. The Tribunal apparently

has not considered these aspects correctly. Contrary to the factual position, the CEGAT has held that no plea was taken about there being no intention to evade payment of duty as the same was to be reimbursed by the buyer. In fact such a plea was clearly taken. The factual scenario clearly goes to show that there was scope for entertaining doubt, and taking a particular stand which rules out application of Section 11A of the Act.

14. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful.

19. The Apex Court has clearly stated that incorrect statement, unless made with the knowledge that it was not correct, would will not be a ground of wilful misstatement or suppression and no inference can be drawn if full information has been disclosed without intent to evade payment of tax.

20. In the case in hand the authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax, therefore, the proceedings under section 74 of the Act out not to have been initiated against the petitioner.

In view of the above discussions as well as judgment of the Apex Court and this Court, the impugned order dated 20.12.2022 passed by the Additional Commissioner, Grade-2 (Appeal)- II State Tax, Agra, respondent no.1 as well as the order dated 12.1.2022 passed by the Deputy Commissioner, Commercial Tax, Agra, respondent no.2 cannot be sustained and are hereby quashed.

14. The writ petition succeeds and is allowed.

(2025) 9 ILRA 856
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

INCOME TAX APPEAL No. 436 of 2012

Mahesh Gautam ...Appellant
Versus
Commissioner Of Income Tax ...Respondent

Counsel for the Petitioner:
Rahul Agarwal

Counsel for the Respondents:
Manu Ghildiyal

Issue for Consideration

Matter pertains to the validity of the service of notice under S. 148 of the Income Tax Act, 1961, specifically whether the notice sent via speed post, without acknowledgement, can be presumed served under S. 27 of the General Clauses Act, 1897, and whether the failure to affix the notice at the last known address when the appellant was not traceable vitiates the reassessment proceedings.

Headnotes

Income Tax Act, 1961 - S. 148 read with S. 282 - Service of Notice - Distinction between Speed Post and Registered Post - S. 148 as well as S. 282 of the Act, 1961 clearly state that a notice through post must be delivered to the addressee personally, not simply to his address - Consequently, in the absence of personal service on the assessee, the legal presumption of service u/s 27 of the Act, 1897 and S. 114(f) of the Act, 1872, can only be applied when notice is sent via registered post, not by speed post - Speed post is address-specific, it can be delivered to any person at the mentioned address, whereas registered post is addressee-specific.

Code of Civil Procedure, 1908 - Order V Rule 17 - Affixation of Notice - Untraceable Assessee - Where the Income Tax Inspector reported that the whereabouts of the appellant could not be ascertained, the Assessing Officer was required to take steps to serve the appellant through affixture on his last known address. In the absence of the Assessing Officer acting on that report by taking steps to serve the appellant through affixture, the procedure prescribed for service of notice under S. 282 of the Income Tax Act stood not complied with.

General Clauses Act, 1897 - S. 27 - Presumption of Service - Application to Speed Post - The phrase 'registered post' mentioned in S. 27 of the Act, 1897 cannot be interpreted liberally for the purpose of the income tax act - Therefore, for the purpose of deemed service u/s 27 of the Act, 1897 for the notice u/s 148 of the Act, 1961, speed post cannot be considered equivalent to registered post.

Held: In the present case, it is undisputed that notice was sent by speed post without any acknowledgement rather than through registered post which is a fundamental requirement for service of notice upon the addressee personally. Consequently, the presumption of service u/s 27 of the Act, 1897 read with S. 114(f) of the Act, 1872 cannot be invoked in relation to the notice sent by speed post even if the envelope containing the notice u/s 148 of the Act, 1961 was not returned back - This court decides the substantial question no.1 in favour of the appellant and concludes that there was no service of notice u/s 148 of the Act, 1961 through post upon the assessee (appellant) - Regarding the substantial question no.2 about the failure to affix the notice at the last known address of the assessee (appellant) especially when he was not traceable at that address, it is relevant to mention that service through Income Tax Officer was attempted by the assessing officer in accordance with Part II of S. 282(i) of the Act, 1961 - In the present case, it is not in dispute that Income Tax Officer did not affix notice at the assessee's address despite the fact that assessee was not traceable there - Therefore, service of notice through personal service as specified by Order V Rule 17 of CPC and Part II of S. 282(i) of the Act, 1961 was not validly made - In view of the above, present appeal is allowed and the order dated 16.11.2011 passed by Income Tax Appellate Tribunal, Agra Bench, Agra for the A.Y. 2002-03 is hereby set-aside. (Paras 32,33,34,35,36,37) (E-7)

Case Law Cited

Smt. Gayatri Devi v. CIT, Agra **(ITA No. 11 of 2006);** *Milan Poddar v. CIT, Ranchi* **(T.A. No. 59 of 2010);** *CIT v. Hotline International Pvt. Ltd.* **(2008) 296 ITR 333 (Del);** *Madan Lal Agarwal v. CIT, Kanpur* **(1983) 144 ITR 745 (All);** *Smt. Jaswant Kaur v. ADJ, Faizabad* **(SCC Revision No.154/2015).**

List of Acts

Income Tax Act, 1961; Indian Evidence Act, 1872; General Clauses Act, 1897; Code of Civil Procedure, 1908; Indian Post Office Act, 1898; Post Office Act, 2023; Post Office Rules, 2024; Post Office Regulations, 2024.

List of Keywords

service of notice; speed post; registered post; affixture; presumption; returned back; reassessment proceedings; personal service; properly addressing; not traceable; substantial questions of law.

Case Arising From

APPELLATE JURISDICTION: Order dated 16.11.2011 of the Income Tax Appellate Tribunal, Agra Bench, Agra for A.Y. 2002–03.

Appearances for Parties
Advs. for the Appellant:
Sri Ankur Agarwal, holding brief of Sri Rahul Agarwal
Advs. for the Respondents:
Sri Manu Ghildiyal

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

1. Heard Sri Ankur Agarwal, Advocate, holding brief of Sri Rahul Agarwal, learned counsel for the appellant and Sri Manu Ghildiyal, learned counsel for the respondents.

2. Present income tax appeal has been filed u/s 260A of Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') against the order dated 16.11.2011 passed by Income Tax Appellate Tribunal, Agra Bench, Agra for the A.Y. 2002-03.

3. Present appeal was admitted on 27.03.2012 on the following substantial questions of law:

"1. Whether the finding of the Tribunal that the notice under Section 148 of the Income Tax Act had been validly served on the appellant, by holding that the findings recorded in the Assessment Order and in the first appellate order were incorrect only because the envelope containing the unserved notice could not be found in the original records, is perverse and liable to be set aside?

2. Whether in view of the report of the Inspector (sent by the Assessing Officer to effect service of notice on the appellant) that the whereabouts of the appellant could not be ascertained and in absence of the Assessing Officer acting on that report by taking steps to serve the appellant through affixture, etc. on his last known address, the procedure prescribed for service of notice under Section 282 of the Income Tax Act stood complied with and the Tribunal is justified in holding that the notice was validly served on the appellant?"

4. Appellant filed his return of income for A.Y. 2002-03 on 23.10.2002, declaring an income of Rs.3,90,860/-. Thereafter, on the information received from the Central Excise Department, the Assessing Officer, after taking the required approval, issued notice u/s 148 of the Act, 1961, to the appellant for the A.Ys. 2001-02, 2002-03 and 2003-04. These notices were sent via speed post to appellant's address, but no return was filed by the appellant. Thereafter, notice u/s 142(i) of the Act, 1961 was also issued for the above assessment years, requiring the appellant to furnish some information and details, and a date was fixed for hearing on 20.08.2008, but in response to the same, neither the appellant nor his authorized representative appeared nor filed any application for adjournment. Thereafter, another notice was also sent to the appellant fixing the date for hearing on 02.12.2008 at two addresses available on record. Still the appellant failed to appear before the Assessing Officer. Thereafter, the Assessing Officer sent the Income Tax Inspector to deliver a notice to the address on record. However, the Income Tax Inspector reported that the whereabouts of the appellant could not be ascertained. Therefore, Assessing Officer continued with the re-assessment proceeding and passed ex parte order u/s 147 read with Section 144 of the Act, 1961, assessing the total income of appellant as Rs.11,87,980/- for the A.Y. 2003-04. This order was sent to the appellant's address in Khandaar Swai Madhopur, Rajasthan, which was duly received by him.

5. The appellant filed an appeal against the order dated 15.12.2008 passed by Assessing Officer before Commissioner of Income Tax (Appeal)-II, Agra which was registered as Appeal No.CIT(A)-II/268, 269 & 270/DCIT (CC)/AGR/08-09. The appeal of the appellant was allowed on the ground that the notice u/s 148 of the Act, 1961, sent to the appellant was returned back. Therefore, in the absence of service of notice issued u/s 148 of the Act, 1961, the process of initiating re-assessment proceedings u/s 142 of the Act, 1961, was erroneous. However, the Income Tax Department (Revenue), feeling aggrieved by the order passed in appeal by the Commissioner of Income Tax, challenged the same before the Income Tax Tribunal, Agra Bench, Agra.

6. The Income Tax Appellate Tribunal vide judgement dated 16.11.2011 allowed the appeal of the Income Tax Department (Revenue) so far as the A.Y.s 2002-03, 2003-04 are concerned and dismissed the appeal for the A.Y. 2001-02. The reason given by the Income Tax Tribunal for allowing the appeal was that there was nothing on record that notice u/s 148 of the Act, 1961, sent to the assessee was returned back as no envelope was available on record. Therefore, in absence of envelope containing the notice, it would be presumed that notice has been served upon the assessee in view of the presumption u/s 114(f) of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act, 1872') and this fact was ignored by the Assessing Officer as well as the first appellate court.

7. The above order of Income Tax Appellate Tribunal is under challenge in the present appeal regarding the A.Y. 2003-04.

8. Learned counsel for the appellant has submitted that the order passed by the Income Tax Appellate Tribunal is absolutely erroneous as the Assessing Officer as well as first appellate court has recorded specific finding that notice u/s 148 of the Act, 1961 sent through speed post was returned back then merely because envelope was not available on record and same was missing, it cannot be presumed that notice has been deemed to be served upon the appellant by taking presumption u/s 114(f) of the Act, 1872. It is further submitted by learned counsel for the appellant that the notice has to be served as per the procedure mentioned u/s 282 of the Act, 1961 wherein the word 'post' has been mentioned which means only 'registered post' as per Section 27 of the General Clauses Act, 1897 (hereinafter referred to as 'the Act, 1897'), not the speed post. Therefore, service of notice u/s 148 of the Act, 1961 is not sufficient upon the appellant, therefore, consequential proceeding of re-assessment is absolutely erroneous.

9. It is also submitted by learned counsel for the appellant that the Income Tax Inspector sent by the Assessing Officer submitted a report that assessee is not traceable, therefore, unless he affixed the notice at the last known address of the appellant as per the procedure prescribed u/s 282 of the Act, 1961, the service of notice u/s 148 of the Act, 1961, cannot be deemed to be sufficient.

10. In support of his contention, learned counsel for the appellant has relied upon the judgement of the Division Bench of this court in the case of Smt. Gayatri Devi Vs. The Commissioner of Income Tax Agra and Another in Income Tax Appeal No.11 of 2006 as well as judgement of

Division Bench of Jharkhand High Court in the case of Milan Poddar Vs. Commissioner of Income Tax, Central Revenue Building, Main Road, Ranchi & Another in T.A. No.59 of 2010.

11. Per contra, learned counsel for Revenue (income tax department) has submitted that while deciding the appeal, Income Tax Tribunal on perusal of record found that there is no envelope on record showing the notice sent to the appellant was returned back. Therefore, finding of assessing authority as well as first appellate authority was contrary to record and same was rightly set aside by the Income Tax Tribunal in appeal. Therefore, there is no illegality in the order passed by the Income Tax Appellate Tribunal. In support of his contention, learned counsel for the income tax department has also relied upon the Division Bench judgement of the Jharkhand High Court in Milan Poddar's case (supra) wherein the Division Bench of Jharkhand High Court has observed that speed post is also a registered post. It is further submitted by learned counsel for the income tax department that though income tax officer personally visited the address given by the appellant and submitted report that appellant is not traceable though that was not required because notice has already been deemed to be served upon the appellant as the notice sent through registered post did not return back. It is also submitted that the assessment order was duly received by the appellant on the address on which the notice u/s 148 of the Act, 1961 was sent to the appellant. Therefore, no substantial question of law arises in the present case and appeal deserves to be dismissed.

12. After hearing the submission of learned counsel for the parties and on perusal of record, it is clear that this fact is not disputed that the envelope containing the notice u/s 148 of the Act, 1961 sent to appellant through registered post is not available on record as on date because this court itself perused the original record which was produced before this court in pursuance of order dated 15.12.2016 even though the assessing officer as well as first appellate authority has recorded the finding that notice sent to the appellant has returned back.

13. Service of notice u/s 148 of the Act, 1961, upon the assessee is a precondition to initiate reassessment proceedings. This being the provision of a taxing statute, it should be construed strictly. Section 148 of the Act, 1961 is being quoted as under:

"148. Issue of notice where income has escaped assessment.-1 [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished undersection 139:

[Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in

response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case?

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.-For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]"

14. So far as the contention of learned counsel for the appellant that for service of notice as per Section 282 of the Act, 1961, notice should be served on the assessee personally through, post means only the registered post not the speed post is concerned to decide the question, it would be appropriate to reproduce Section 282 of the Act, 1961 as existing at the relevant time is being quoted as under:

"282- Service of notice generally

(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed-

(a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(b) in the case of a local authority or company, to the principal officer thereof;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

15. From perusal of Section 148 of the Act, 1961, it is clear that notice has to be served on the assessee personally and as per Section 282 of the Act, 1961, notice required under the Act, 1961 may be served on a person either by post or as a summon issued by the court under the Code of Civil Procedure, 1908.

16. The word 'post' has not been defined in the Act, 1961 or in the Indian Post Office Act, 1898, the Post Office Act, 2023, the Indian Post Office Rules, 1933,

the Post Office Rules, 2024, but it has been defined in Section 2(1)(k) of the Post Office Regulation, 2024. As per this definition, any system for collection, dispatching, conveyance and delivery of items by the postal network is 'post'. Regulation 2(1)(k) is being reproduced as under:

"2(1)(k). 'Post' means any system for collection, clearance, sorting, dispatch, conveyance, and delivery of items by the postal network."

17. In view of the above mentioned definition of post, registered post or speed post, both come within the definition of post. However the procedure of sending and serving the summons issued by the court under C.P.C. includes not only sending the notice through registered post but also personal service and in absence thereof, affixing the notice at the house of assessee. However, if there is no proof of service of notice sent through post to the addressee, then the presumption of service of registered post can be invoked as per Section 27 of the Act, 1897. But for invoking the presumption of service of notice through post upon the addressee, the condition mentioned u/s 27 of the Act, 1897 should be fulfilled which requires a proper address, pre-paying and posting by registered post. Section 27 of the Act, 1897 is being mentioned as below:

“27. Meaning of service by post-.Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

18. From the perusal of Section 27 of the Act, 1897, it is clear that the meaning of service by post has been defined as service properly addressing, pre-paying and posting by registered post, a letter containing a document.

19. The term "post" and "registered post" are relevant for the present purpose. In the case of Milan Poddar Vs. Commissioner of Income Tax (supra), the Division Bench of Jharkhand High Court has observed that the speed post is also a registered post as the speed post is also included in the generic word "post or registered post". It is relevant to mention here that the words 'registered post' mentioned in Section 27 of the Act, 1897, was interpreted by the Division Bench of Jharkhand High Court in Milan Poddar (supra) as per its literal meaning by interpreting it using a liberal interpretation and observed that registered post means the post recorded in a register or book and even the ordinary post for which record is maintained will also come in the definition of registered post. Paragraph no.18 of the judgement of Milan Poddar (supra) is being quoted as under:

"18. In view of the reasons discussed above, we are of the considered opinion that the notice under Section 282 the Act of 1961, can be sent by post including "Ordinary post", "Registered post" as well as "Speed-post". The post is a generic word and its species are "Ordinary post", "Registered post", "Speed-post" and

"Under Certificate of Posting" ete. Learned Tribunal rightly relied upon page 102 of "Maxwell on The Interpretation of Statutes" (Twelfts Ed. By P.St. J. Langan), wherein it has been stated that the "language of the statute is generally extended to new things which were not known and could not have been contemplated when the Act was passed, when the Act deals with a genus and the thing which afterwards comes into existence was a species of it." The Speed Post is a new mode of sending post, and therefore, this new postal mode if is not mentioned in Statute specifically, even then because of above reason that service by Speed Post is included in generic word "Post or "Registered Post".

20. The Single Judge Bench of Allahabad High Court in S.C.C. Revision No.154 of 2015 (Smt. Jaswant Kaur Vs. Additional District Judge, Court No.1, Faizabad And Ors.) also observed that notice by speed post is no less than a notice by registered post, as the speed post is a quicker mode of service sent through registered post. Therefore, the presumption of service u/s 27 of the Act, 1897 will also apply to the notice sent through speed post. Relevant extract of the judgement of Smt. Jaswant Kaur (supra) is being quoted as under:

"In so far as the question of sending notice is concerned, undisputedly the envelope containing the notice was correctly addressed and the notice was re-directed to a place where the respondents were carrying on business. Notice by speed post is no less than a notice by registered post for the reason that it is quicker mode of service available in the developed urban areas. The only distinction is that a registered letter is handed over to the addressee alone whereas a letter by speed post can be received by any person present at the address. The respondents have not disputed the address mentioned on the envelop, therefore, denial of presumption in favour of the revisionist under Section 27 of the General Clauses Act is clearly perverse."

21. The phrase 'registered post' are mentioned in Section 27 of the Act, 1897 cannot be interpreted liberally for the purpose of the income tax act. It is established law that taxing statute has to be interpreted strictly. Thus, the term 'registered post' in Section 27 of the Act, 1897 should be understood in reference to the registered post services provided by the Indian Postal department which were initially covered by the Indian Post Office Rules, 1933 (hereinafter referred to as 'the Rules, 1933') and is now regulated under the Indian Post Office Rules, 2024 and the Post Office Regulations, 2024.

22. It is apropos to mention that the Rules, 1933 were framed under the Indian Post Office Act, 1898. However, the Indian Post Office Act, 1898 has since been repealed by the Post Office Act, 2023 wherein Post Office Rules 2024 and Post Office Regulation 2024 were framed. Nonetheless, at the time the notice was issued in the present case in the year 2008, the Rules, 1933 were still in effect. Therefore, difference between the registered post service as well as speed post service can be discussed taking into consideration the Rules, 1933.

23. As per Rule 58 of the Rules, 1933 any letter or parcel may be registered at any post office for transmission by post to any other post office. The said Rule is being quoted as under:

"58. Letters, letter cards, book and pattern packets, parcels and newspapers prepaid with postage at newspaper rates of postage may be registered at any post office for transmission by post to any other post office."

24. As per Rule 60 of the Rules, 1933, pre-payment of the postage and registration fees is obligatory in the case of all registered articles. The said Rule is being quoted as under:

"60. The prepayment of the postage and registration fees is obligatory in the case of all registered articles."

25. As per Rule 62 of the Rules, 1933 when an article is presented for registration at the post office then receipt shall be given to him for posting the registered article. The said Rule is being quoted as under:

"62. A receipt shall be given to the person who presents an article for registration at the post office window during the hours prescribed for posting registered articles."

26. However, as per the Rule 63 of Rules, 1933, no registered article shall be delivered to the addressee unless and until he or his agent has signed a receipt for it and Rule 64 of the Rules, 1933 prescribes that if sender of a registered article wants to attach acknowledgement of delivery of article then after signing it, he has to pay additional postage. Rules 63 and 64 of the Rules, 1933 are being quoted as under:

"63. No registered article shall be delivered to the addressee unless and until he or his agent has signed a receipt for it in such form as the Director General shall prescribe.

64. (1) If the sender of a registered article pays at the time of positing the article a fee of rupee three in addition to the postage and registration fee, there shall be sent to him on the delivery of the article a form of acknowledgment which shall be signed in ink by the addressee or his duly authorized agent or if the addressee refuses to so sign shall be accompanied by statement to the effect that the addressee or his duly authorized agent has refused to so sign:

'Provided that no fee shall be payable in respect of a registered "Blind Literature" packet for which an acknowledgement is required.

(2) No article for which an acknowledgment is required under sub-rule(1) shall be accepted for registration unless it bears the name and address of the sender and is accompanied by a prescribed form of acknowledgment duly filled in and securely fastened to such article, and unless the article bears the superscription Acknowledgment Due on the address side."

27. Similarly, the Inland Speed Post, which was introduced in 1986, was mentioned in Rule 66B of the Rules, 1933. As per Rule 66B of the the Rules, 1933, Inland Speed Post Article may be booked after obtaining receipt thereof at the specified places for the delivery to certain areas. As per Rule 66B(1) of the Rules, 1933, classes of mail which can be sent by registered service can also be sent through speed post service.

28. As per Rule 66B(3) of the Rules, 1933, the envelope through speed post must bear the name and address of the sender and also the pin code of the post offices of serving address.

29. Similarly, as per Rule 66B(5) of the Rules, 1933, speed post service is a service for delivering postal articles within stipulated time on specified city or town. Rules 66B(1) and 66B(3) of the Rules, 1933 are being quoted as under:

"66-B (1)INLAND SPEED POST SERVICE:- Inland Postal articles may be booked, after obtaining receipts therefore, at the places specified in column (1) of the Schedule below and at the post offices specified in the corresponding entries in column (2) of the said Schedule, for delivery under the Inland Speed Post Service, subject to the following conditions, namely:-

(1) Inland Speed Post Service shall be available in respect of all classes of mails, which can be sent by registered service:

(3) articles for booking under this service shall prominently bear on, the front the superscription "INALAND SPEED POST" and shall also bear the name and address of the sender in addition to that of the addresses, including the PIN codes of the Post Offices of deliver serving the addressee and the sender and their telephone number , if any:"

30. From the above quoted Rules, 1933, it is clear that registered post is addressee-specific and it has to be delivered to the addressee by taking a signature. However, speed post is address-specific, it can be delivered to any person at the mentioned address.

31. Though, as of date, Rules, 1933 have been repealed by the Post Office Rules, 2024, and Post Office Regulations 2024 have also been issued under the Post Office Act, 2023. But the difference in registered post, speed post is same as mentioned in the Rules, 1933. It is also relevant to mention here that now the registered post and speed post have been merged, and in place thereof registered speed post has been initiated from September 2025, but that is not relevant to decide the controversy in the present case.

32. Section 148 as well as Section 282 of the Act, 1961 clearly state that a notice through post must be delivered to the addressee personally, not simply to his address. Consequently, in the absence of personal service on the assessee, the legal presumption of service u/s 27 of the Act, 1897 and Section 114(f) of the Act, 1872, can only be applied when notice is sent via registered post, not by speed post. Therefore, for the purpose of deemed service u/s 27 of the Act, 1897 for the notice u/s 148 of the Act, 1961, speed post cannot be considered equivalent to registered post. It is appropriate to reiterate that notice sent by speed post, if personally served upon the assessee, then the same is sufficient service as per Section 148 read with Section 282 of the Act, 1961. Therefore, we are respectfully disagree with the observation of Division Bench of Jharkhand High Court in the case of Milan Poddar (supra).

33. The Division Bench of Delhi High Court also considered Section 282 of the Act, 1961 for the purpose of sending notice u/s 148 of the Act, 1961. In the case of Commissioner of Income Tax Vs. Hotline International P. Ltd reported in (2008) 296 ITR 333 (Del) and after considering the scope of sending notice through post as well as other mode as mentioned in CPC for sending summons, observed that for the purpose of the Act, 1961, registered post ought to be sent along with acknowledgement deed and notice has to

be served personally upon the assessee himself or his authorised agent and observed that merely a refusal to receive notice by the security guard cannot be treated as service upon the assessee. In case of refusal by the assessee to receive notice, it has to be affixed. Paragraph nos.22, 23, 24 and 25 of Hotline International P. Ltd (supra), which are being quoted as under:

"22. As per Order V, rule 12 of the Code of Civil Procedure referred to above, wherever it is practicable, the service has to be effected on the defendant in person or on his agent. Admittedly, in the present case, notice under section 148 of the Act was not tendered to the assessee nor was the same refused at all by the assessee. It is an admitted case of the Revenue that when the officials of the Income-tax Department went to serve the notice under section 148 for the assessment year 1995-96, the security guard informed them that the company was closed for Holi festival holidays. The security guard by no stretch of imagination can be said to be the agent of the assessee and admittedly no notice was tendered either to the assessee or his agent nor was the same refused either by the assessee or his agent.

23. Under Order V, rule 17 of the Code of Civil Procedure, the affixation can be done only when the assessee or his agent refuses to sign the acknowledgment or could not be found. Here, in the present case, no effort was made by the Income-tax Department to serve the notice upon the assessee, since the company of the assessee was closed due to Holi festival holidays, and admittedly no effort was made by the serving officer to locate the assessee.

24. Even otherwise, as per Order V, rule 19A of the Code of Civil Procedure, the notice sent by registered post ought to have been sent along with acknowledgment due but admittedly it was not sent along with acknowledgment due.

25. So, from the entire material available on record we have no hesitation in holding that there has been no valid service of notice under section 148 of the Act upon the assessee as the same was neither tendered to the assessee or his agent, nor the same was refused by either of them."

34. The Division Bench of Allahabad High Court in the case of Madan Lal Agarwal Vs. Commissioner of Income-Tax, Kanpur reported in (1983) 144 ITR 745 (All) observed that issuance of valid notice u/s 148 of the Act, 1961 is a condition precedent for re-assessment u/s 147 of the Act, 1961 and therefore, in the absence of valid service upon the assessee, proceeding u/s 147 of the Act, 1961 for reassessment cannot be initiated. Relevant extract of Madan Lal Agarwal (supra) is being quoted as under:

"It is now well settled, and we do not consider it necessary to advert to numerous authorities in this regard cited at the Bar, that issuing of a valid notice to the assessee under s. 148 of the I. T. Act within the period specified under s. 149 of the Act is a condition precedent to the validity of any assessment to be made against such assessee under s. 147 of the Act. Accordingly, where no such notice has been issued or if the notice issued is not valid or the same has not been served on the assessee in accordance with law, it will not be possible to sustain the eventual assessment made under s. 147 on the basis of such notice. We may also take it that where the notice Issued to an assessee is vague, it would not be possible to rely upon it to sustain an assessment made under s. 147 of the I. T. Act. In this regard two

questions that arise for our consideration are: (1) whether the notice dated 29th September, 1962, issued under section 148 suffers from the vice of vagueness; and (2) whether the sald notice can, after subsequently removing the vagueness, be relied upon for sustaining an assessment under s. 147 of the I. T. Act."

35. In the present case, it is undisputed that notice was sent by speed post without any acknowledgement rather than through registered post which is a fundamental requirement for service of notice upon the addressee personally. Consequently, the presumption of service u/s 27 of the Act, 1897 read with Section 114(f) of the Act, 1872 cannot be invoked in relation to the notice sent by speed post even if the envelope containing the notice u/s 148 of the Act, 1961 was not returned back. Additionally, the learned Tribunal recorded finding that envelope having the notice so returned is not readily traceable, without verifying from other documents that the envelope was actually available on record or not, during the assessment and first appellate proceeding, though there was specific finding of assessing and appellate authorities in that envelope sent through speed post to the assessee containing notice was returned back. Therefore, this court decides the substantial question no.1 in favour of the appellant and concludes that there was no service of notice u/s 148 of the Act, 1961 through post upon the assessee (appellant).

36. Regarding the substantial question no.2 about the failure to affix the notice at the last known address of the assessee (appellant) especially when he was not traceable at that address, it is relevant to mention that service through Income Tax Officer was attempted by the assessing officer in accordance with Part II of Section 282(i) of the Act, 1961. This is aligned with the Order V Rule 17 of Code of Civil Procedure, which requires affixation of notice when personal service is not possible. In the present case, it is not in dispute that Income Tax Officer did not affix notice at the assessee's address despite the fact that assessee was not traceable there. Therefore, service of notice through personal service as specified by Order V Rule 17 of CPC and Part II of Section 282(i) of the Act, 1961 was not validly made. Therefore, substantial question no.2 is also decided in favour of the appellant by observing the service of notice through the Income Tax Inspector was also not made upon the appellant by affixing the same on the address of the assessee in absence of personal service upon the assessee.

37. In view of the above, present appeal is allowed and the order dated 16.11.2011 passed by Income Tax Appellate Tribunal, Agra Bench, Agra for the A.Y. 2002-03 is hereby set-aside.

(2025) 9 ILRA 867
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.09.2023

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 1261 of 2023

Chitranshi ...Petitioner
Versus
Rajnarayan ...Respondent

Counsel for the Petitioner:
Ram Bihari Mishra, Vikas Upadhyay

Counsel for the Respondent:
Abu Sufiyan Azmi

Issue for Consideration

A) Whether after framing of issues an amendment application cannot be allowed as the same will be hit by proviso to Rule 17 of Order VI of C.P.C?

B) Whether by way of the proposed amendment, the plaintiff-respondent has tried to change the cause of action for filing divorce petition by adding averments?

Head Notes

The Hindu Marriage Act,1955-Section 13, The Code of Civil Procedure-1908-Order VI Rule 17, Order XIV Rule 1, Order XVIII Rule 1 & 2- If some facts have come to the knowledge of the party to the suit subsequent to the commencement of trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real questions in controversy between the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced-Petition dismissed.

Held -(A) That amendment application for amendment in pleading can be allowed after commencement of the trial, if the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of the trial.
B) There is no impediment in taking that ground by moving an application for amendment in the petition.(E-15)
(Para 16 to 18)

Case Law Cited

Raj Kumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another (2008) 14 SCC 364; Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel; (2021) 20 SCC 210; Mohinder Kumar Mehra Vs. Roop Rani Mehra and others reported in (2018) 2 SCC 132

List of Acts

The Hindu Marriage Act-1955, The Code of Civil Procedure-1908,

List of Keywords

Amendment Divorce petition, Amendment application after framing of issues, Order VI Rule 17, Section 13 Hindu Marriage Act.

Case Arising From

Order dated 12.12.2022 passed by Principal Judge, Family court, Hamirpur allowing an application for amendment moved by the plaintiff-respondent under Order VI Rule 17 of C.P.C. in Marriage Petition No. 291 of 2020 (Rajnarayan Tripathi Vs. Chitranshi).

Appearances for Parties

Counsel for Petitioner(s) : Ram Bihari Mishra, Vikas Upadhyay
Counsel for Respondent(s) : Abu Sufiyan Azmi

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This petition has been filed challenging the order dated 12.12.2022 passed by Principal Judge, Family court, Hamirpur allowing an application for amendment moved by the plaintiff-respondent under Order VI Rule 17 of C.P.C. in Marriage Petition No. 291 of 2020 (Rajnarayan Tripathi Vs. Chitranshi).

2. Brief facts of the case are that plaintiff-respondent filed a petition under Section 13 of the Hindu Marriage Act, 1955 for relief of divorce on the grounds stated in the petition. The defendant-petitioner filed written statement denying the averments made by the plaintiff-respondent in the petition for divorce. On 27.07.2022, following issues were framed by the Principal Judge (Family Court), Hamirpur:-

"दिनांक 27.07.2020 पुकारा गया। उभयपक्ष अपने-अपनेअधिवक्तागण के साथ उपस्थित आये। पत्रावली का अवलोकन किया। पत्रावली वास्तेवाद बिन्दु विरचित कियेजानेहतु नियत हा। उभयपक्ष के अधिवक्तागण को वाद बिन्दु विरचित कियेजानेकेसन्दर्भमेंसुना गया। तत्पश्चात निम्नलिखित वाद बिन्दु विरचित किये गये- 1. क्या वादी राजनारायण त्रिपाठी वादपत्र

मेवर्णित अभिकथनों केआधार पर विपक्षी श्रीमती चित्रांशी केविरूद्ध विवाह विच्छेद (तलाक) की डिक्री प्राप्त करने योग्य ह?ै Versus Counsel for Petitioner(s) : Ram Bihari Mishra, Vikas Upadhyay Counsel for Respondent(s) : Abu Sufiyan Azmi Chitranshi .....Petitioner(s) Rajnarayan Tripathi .....Respondent(s) 2. वादी यदि ह,ै तो किसी अनुतोष को पानेकी अधिकारी ह?ै अन्य कोई वाद बिन्दु विरचित नहीं होता हैऔर न ही अन्य किसी वाद बिन्दु को बनानेहतुे उभयपक्ष के अधिवक्तागण द्वारा बल दिया गया। अतः पत्रावली वास्ते साक्ष्य हतु े दिनांक 1.8.22 को पेश हो।"

3. Thereafter on 13.10.2022, the plaintiff-respondent filed an application under Order VI Rule 17 of C.P.C. seeking amendment in paragraph No. 7, 11 and 14 of the plaint, which was opposed by the defendant-petitioner. The Principal Judge (Family Court) Hamirpur by order dated 12.12.2022 allowed the amendment application on payment of cost of Rs. 800/-. Hence the present petition.

4. Contention of learned counsel for the petitioner is that the amendment application was filed by the plaintiff-respondent under Order VI Rule 17 of C.P.C. after framing of issues. According to learned counsel for the petitioner, in view of proviso to Rule 17 of Order VI of C.P.C., the amendment application cannot be filed after the commencement of the trial, unless, the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. According to the petitioner, since in view of provisions of Section 10 of the Family Court Act, 1984 read with Section 21 of the Hindu Marriage Act, 1955, procedure as prescribed in C.P.C. is applicable to the proceedings under the Hindu Marriage Act, 1955. It has been further contended by learned counsel for the petitioner that initially the divorce petition was filed on the ground of desertion and cruelty. By the proposed amendment, the plaintiff-respondent has tried to change the cause of action for filing divorce petition by adding averments that petitioner is moving around with her colleague Umakant Namdev and her behaviour with her colleague is immoral and shows that relationship between the petitioner and her colleague is very close, which cannot be said to be friendly relationship and the plaintiff-respondent is aggrieved by the actions of the petitioner. Other facts were also tried to be added by the plaintiff-respondent.

5. It is further contended by learned counsel for the petitioner that once a marriage petition is filed on the basis of one of the grounds mentioned under Section 13 of the Hindu Marriage Act, 1955, by amendment cause of action cannot be changed by adding other grounds given under Section 13 of the Hindu Marriage Act, 1955 for divorce.

6. *Per contra*, learned counsel for the plaintiff-respondent has submitted that the amendment application was filed immediately after the settlement of issues. Neither of the parties has led evidence after settlement of the issues and therefore, it cannot be said that the hearing of the case has commenced and thus, the proviso to Rule 17 of Order VI will not apply in the present case and the court below has rightly allowed the application filed by the plaintiff-respondent. It has also been contended by learned counsel for the respondent that by the proposed amendment no fresh ground i.e. cause of action is being introduced by the plaintiff-respondent and by the proposed amendment, the respondent wanted to bring on record certain facts which came in existence after filing of the divorce petition.

7. Before considering the rival submissions of learned counsel for the parties, it would be appropriate to consider

the relevant statutory provisions in this regard. Section 13 of the Hindu Marriage Act, 1955 is quoted as under:-

"Divorce -(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.--In this clause,--

(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(iv)(****)

(v) has (* *) been suffering from venereal disease in a communicable form; or*

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; (***)

[Explanation--In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground:

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one

year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,--

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]"

8. Rule 17 of Order VI of C.P.C. provides for amendment in the pleadings and the same is quoted as under:

"17. Amendment of pleadings.?The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

9. Order XIV of the C.P.C. provides for settlement of issues and determination of suit on issues of law or on issue agreed upon. Order XIV Rule 1 of C.P.C. is quoted as under.

"1. Framing of issues.?(1) Issues arise when a material proposition of fact or

law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing is this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence."

10. Order XVIII of C.P.C. provides for hearing of the suits and examination of evidence. Rule 1 of Order XVIII provides that plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. Rule 2 of Order XVIII of C.P.C. provides for settlement and production of evidence. Rules 1 and 2 of Order XVIII of C.P.C. are quoted as under:-

"1. Right to begin.?The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence.?(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

[(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the

Court, for reasons to be recorded in writing, considers it necessary to grant such adjourment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.]

(4) [***]

11. Learned counsel for the petitioner in this regard relied upon judgment of the Hon'ble Supreme Court in case of **Raj Kumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another reported in (2008) 14 SCC 364 and Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel; (2021) 20 SCC 210 .**

12. So far as submission of learned counsel for the petitioner that after framing of issues an amendment application cannot be allowed as the same will be hit by proviso to Rule 17 of Order VI of C.P.C. is concerned, is not an absolute proposition of law for the reason that amendment application for amendment in pleading can be allowed after commencement of the trial, if the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of the trial. There can also be a situation where the facts affecting the parties came in existence after the filing of the suit or even after the settlement of the issues, then the said facts can be brought by way of amendment in order to do complete justice between the parties. Further in case, any relief is added or any cause of action is added for which the plaintiff is entitled to bring a fresh suit, there is no impediment in allowing the amendment adding that cause of action or the relief, in order to avoid the multiplicity of proceedings. Merely framing of issue cannot be said to be commencement of trial. The Hon'ble Supreme Court in case of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others reported in (2018) 2 SCC 132** in paragraph Nos. 13 to 24 has held as under:-

"13. Order VI Rule 17 of C.P.C. as it now exists is as follows:-

"17. Amendment of Pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

14. By Amendment Act 46 of 1999 with a view to shortage litigation and speed of the trial of the civil suits, Rule 17 of Order VI was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial. Not permitting amendment subsequent to commencement of the trial is with the object that when

evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases.

15. This Court in Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344 has noted the object of Rule 17 in Para 26 which is to the following effect:

"26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

16. The judgment on which much reliance has been placed by learned counsel for the appellant is Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors: (2006) 4 SCC 385. This Court had occasion to consider and interpret Order VI Rule 17 in Paragraphs 15 and 16, in which following has been held:-

"15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties."

17. Although Order VI Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of Proviso to the effect that no application for amendment shall be allowed after the trial is commenced. Reserving the Court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. In a suit when trial commences? Order XVIII of the C.P.C. deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with "Disposal of the Suit at the first hearing", when it appears that the parties are not in *issue of any question of law or a fact. After*

issues are framed and case is fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences.

18. This Court in Vidyabai & Ors. Vs. Padmalatha & Anr., (2009) 2 SCC 409 held that filing of an affidavit in lieu of examination-in-chief of the witnesses amounts to commencement of proceedings. In Paragraph 11 of the judgment, following has been held:-

"11. From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfill the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion, would amount to "commencement of proceeding"."

19. Coming to the facts of the present case, it is clear from the record that issues were framed on 17.05.2010 and case was fixed for recording of evidence of plaintiff on 10.08.2010. The plaintiff did not produce the evidence and took adjournment and in the meantime filed an application under Order VI Rule 16 or 17 on 17.01.2011. Thereafter the Court on 26.07.2011 has granted four week's time as the last opportunity to file the examination-in-chief. It is useful to quote Paragraph 4 of the Order, which is to the following effect:-

"4. In view of the above, it is directed as follows:-

(i) Having regard to the delay which has ensued, subject to the plaintiff paying costs of Rs.5,000/- each to the contesting defendant No.1 and 5 within a period of one week, the plaintiff is permitted four weeks time as a last opportunity to file the examination-in-chief of his witnesses on affidavit.

ii) The matter shall be listed before the Joint Registrar for recording of plaintiffs evidence on 29 August, 2011.

(iii) The case shall be listed before court for direction on 18.01.2012.

(iv) Needless to say in case IA No. 1001/2011 is allowed, appropriate orders for evidence of the plaintiff would be made."

20.Thus technically trial commenced when the date was fixed for leading evidence by the plaintiff but actually the amendment application was filed before the evidence was led by the plaintiff. The parties led evidence after the amendment application was filed. In this context, it is necessary to notice the order of the High Court dated 14.02.2014, which records that evidence of both the parties have been concluded. Most important fact to be noticed in the order is that the Court recorded the statement of plaintiff's counsel that parties have led evidence in view of the amendment sought in the plaint. The order dated 14.02.2014 is to the following effect:-

"The evidence of both the parties has been concluded. The matter has been listed for final disposal. The learned counsel for the plaintiff has pointed out the order dated 26th July, 2011 wherein observation was made that in case I.A. No. 1001/2011 under Order VI Rule 17 CPC

for amendment of the plaint is allowed, appropriate order for evidence of the plaintiff would be made. As a matter of fact, plaintiffs counsel stated that the parties have also led evidence in view of amendment sought in the plaint and the same covered in the evidence produced by the parties. The defendants, however, alleged that the said amendment was unnecessary and was opposed by the defendants and issue involved in the said circumstances be considered at the time of final hearing of suit as defendant No.1 is more than 85 years old lady, the suit itself be decided.

List this matter in the category of Short cause on 22 May, 2014…."

21.By same order dated 14.02.2014, the Court directed that the amendment application be taken at the time of final hearing. As noticed above, when plaintiff sought for framing additional issues which application was rejected, the matter was taken before the Division Bench and the Division Bench ultimately has directed the learned Single Judge to consider the amendment application. Subsequently, the amendment application was rejected on 24.10.2016.

22 .The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him.

23. This Court in Chander Kanta Bansal Vs. Rajinder Singh Anand, (2008) 5 SCC 117 has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

"13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases."

24.Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We thus are of the view that looking to the purpose and object of the Proviso, the present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso."

13. The law as laid down by Hon'ble Supreme Court in case of Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra) is that technically the trial commences when the date is fixed for leading evidence by the plaintiff. In Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra), the Supreme Court considering the facts of the case allowed the application for amendment as the same was filed before leading evidence by the plaintiff, despite the fact that the issues were framed and date was fixed for leading evidence by the plaintiff. In the present case, it is not the case of any of the parties that the evidence has begin, only objection of the counsel for the petitioner is that the issues were settled before moving an application under Order VI Rule 17 of the C.P.C.

14. In judgment relied upon by counsel for the petitioner Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel (supra), in paragraph Nos. 8, 9, 10, 11 of the judgment, the Supreme Court has held as under:-

"8. Order VI Rule 17 CPC provides for amendment of the pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings (including written statement) in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Proviso to Order VI Rule 17 CPC further provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

9. Relying upon the proviso to Order VI Rule 17 CPC, the High Court has refused the amendment sought qua paragraphs 35 and 36. However, it is required to be noted that as per the case of the appellant-wife, she actually came to know about the actual marriage between the respondent and Hinaben Manubhai Panchal on 14.12.2006 only during the cross-examination of the respondent and when the marriage certificate was produced on record. It is required to be noted that right from the very beginning, it was the specific case on behalf of the appellant that the respondent-husband is living in adultery with Hinaben Manubhai Panchal and in the rejoinder affidavit filed by the respondent-husband, the respondent -husband denied the allegation of adultery and stated that Hinaben Manubhai Panchal is manager in the hospital run by him and she is looking after the hospital and accounts as a job. Though, the respondent-husband had married with Hinaben Manubhai Panchal on 14.12.2006, he did not disclose the correct and true facts and suppressed the material facts. Only in the cross-examination, he admitted the marriage with Hinaben Manubhai Panchal on 14.12.2006 and produced the marriage certificate. Therefore, in view of the above, the restrictions as per the proviso to Order VI Rule 17 CPC shall not be applicable.

10. The proviso to Order VI Rule 17 CPC provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. Therefore, if some facts have come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial and if it is found that it is

necessary for the purpose of determining the real questions in controversy between the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced. In the present case, as observed hereinabove, the factum of actual marriage on 14.12.2006 came to the knowledge of the appellant-wife when the marriage certificate was produced during the cross- examination of the respondent-husband and immediately thereafter the application (Ex.281) for amendment was made.

11. Therefore, as such, and looking to the case on behalf of the appellant, so pleaded in the written statement, the learned Family Court was right and justified in allowing the amendment sought qua paras 35 and 36. The High Court has committed an error in misapplying the proviso to Order VI Rule 17 CPC and has erred in rejecting the amendment sought qua paras 35 and 36 in application (Ex.281)."

15. In the present case also the facts which were sought to be added by means of the proposed amendment came to the knowledge of the plaintiff-respondent subsequently as held by the Principal Judge, Family Court, the proposed amendment is quoted as under:-

"1. यह कि वादपत्र के "पैरा- 7" मेंइबारत "तैयार ह"ै के आगे"बल्कि मेरेऊपर सन्देह करती हैतथा दूसरी स्त्रियों से सम्बन्ध होने का आरोप लगाती ह, का इजाफा ै फ्रमाया जाये।

2. यह कि याचिका के "पैरा- 11" की चौथी लाइन मेंदर्जशब्द "भगा दिया" के बाद इबारत "विपक्षी अपनी नियुक्ति के स्थान मौदहा ब्लॉक मेंराष्ट्री य ग्रामीण आजीविका मिशन के कार्यालय मेंअपनेसहकर्मी उमाकान्त नामदेव के साथ स्वच्छन्द रूप सेघूमती फिरती हैतथा उक्त व्यक्ति का विपक्षी के घर मौदहा मेंआना आना रहता ह,ै जिसेवहाँके लोगों नेभी देखा हैतथा ऑफिस मेंभी विपक्षिया एवं उसके सहकर्मी का व्यवहार अमर्यादित हैतथा उनका व्यवहार पूर्णरूप सेदर्शाता हैकि विपक्षी व उसके सहकर्मी के मध्य बहुत घनिष्ठ सम्बन्ध ह,ै जोकि मित्रता की श्रेणी मेंहरगिज़ नहीं ह.।ै याची विपक्षी की इन हरकतों सेबहुत दुखी हैएवं अब याची व विपक्षी के मध्य पति पत्नी केरिश्ते का आगे भी रह पाना सम्भव नहीं हा।ै

3. यह कि वादंपत्र के पैरा 14 मेंदर्जशब्द "लगा दिया" के आगे"इसी प्रकार दिनांक 29.07.2022 को विपक्षी एवं उसके सहयोगी उमाकान्त नामदेव नेयाची के साथ गाली गलौज किया तथा जान सेमारनेकी धमकी दी गयी, जिसकी रिपोर्ट थाना मौदहा मेंअन्तर्गत धारा-504, 506 भा०द०सं० केअन्तर्गत याची नेदर्ज करायी, जिसकी पेशबन्दी मेंविपक्षी द्वारा झूठेतथ्यों के आधार पर पुलिस अधीक्षक हमीरपुर को प्रार्थना पत्र महज याची द्वारा की गयी प्रथम सूचना रिपोर्ट सेबचनेहतुे प्रस्तुत किया गया हा।ै याची का विपक्षी केसाथ रहने में उसकी स्वयं की जान को खतरा ह इस कारण भी व ै ैवाहिक सम्बन्ध विच्छेद किया जाना आवश्यक ह"ै

16. Considering the rival submissions of the counsel for the parties as well as the facts of the case, I am of the view that amendment sought by the plaintiff-respondent has been rightly allowed by the Principal Judge (Family Court), Hamirpur and mere framing of issues before filing of application of amendment will not be an impediment in allowing the amendment sought by the plaintiff-respondent. If some facts have come to the knowledge of the party to the suit subsequent to the commencement of trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real questions in controversy between the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced.

17. So far as the other contention of learned counsel for the petitioner that by

the proposed amendment, the plaintiff-respondent has tried to change the cause of action for filing the divorce petition by adding new ground is concerned, is also misconceived for the reason that Section 13 of the Hindu Marriage Act, 1955 provides that a petition for divorce can be filed by either husband or wife on the grounds mentioned in the Section 13 of the Hindu Marriage Act, 1955. There is no prohibition for either of the party to file a petition on one or more grounds specified in Section 13 of the Hindu Marriage Act. Even assuming that by the proposed amendment, a new ground is being sought to be added by the plaintiff-respondent in his divorce petition, will not be an impediment for moving such an application. Decision of a petition under Section 13 of the Hindu Marriage Act, 1955 on one ground will not operate as res judicata for filing divorce petition on other grounds as specified in Section 13 of the Hindu Marriage Act, 1955. Once the party is permitted to file a second petition even after dismissal of the first petition on a separate ground, there is no impediment in taking that ground by moving an application for amendment in the petition. Such an amendment can be allowed in order to avoid the multiplicity of proceedings and for the reason that all the dispute between the parties shall be considered and decided in one proceeding instead of filing successive separate petitions, in case the ground so exists.

18. Further with the help of learned counsel for the petitioner as well as counsel for the respondent, I have perused the application for divorce filed by the plaintiff-respondent No. 1 from which it is apparently clear that the petition was filed on two grounds namely, desertion and cruelty. By the proposed amendment, which are noted above, it cannot be said that the plaintiff has tried to introduce a new ground or cause of action in his divorce petition rather, the proposed amendments are elaboration of facts, which came to the knowledge of the plaintiff-respondent during pendency of the divorce petition as the same may amount to cruelty, if the plaintiff-respondent succeeds in proving those allegations by leading cogent evidence.

19. In view of the discussion made above, I am of the opinion that no illegality has been committed by the Principal Judge (Family Court), Hamirpur in allowing the application filed by the plaintiff-respondent for amendment in pleadings.

20. Consequently, the writ petition lacks merit and is dismissed. Since the Marriage Petition No. 291 of 2020 is pending, Principal Judge (Family Court) Hamirpur is directed to consider and decide the aforesaid proceeding in accordance with law, expeditiously, after giving opportunity of hearing to the parties concerned as well as opportunity to lead evidence in support of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment, keeping in view the statutory mandate of Section 21-B of the Hindu Marriage Act.

(2025) 9 ILRA 879
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 1267 of 1984

Lohar & Ors. ...Appellants

Versus

State ...Respondents

Counsel for the Appellant:
Alok Ranjan Mishra, Ashok Kumar Pandey, G.S. Chaturvedi, Rohit Shukla, Vivek Nand Rai

Counsel for the Respondents:

Issue for Consideration
The case involved the conviction of appellants for offenses for murder and house trespass, stemming from a property dispute and a subsequent incident in 1983 where one person died.

Headnotes
A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 304/34, 452, 323/34-Failure of prosecution to explain accused's injuries-Medical evidence Vs. Ocular Testimony-Although witnesses alleged that the accused were armed with bhala and Farsa but the medical reports showed none of the injured sustained injuries corresponding to these sharp weapons, all injuries were caused by hard and blunt weapons-Based on Apex Court judgments, non-explanation of a major injury on the accused renders the prosecution story doubtful and the witnesses unreliable, entitling the accused to the benefit of doubt-Appeal allowed.
Held
The court found out that the prosecution failed to explain a material injury sustained by the accused. the court concluded that the prosecution was not presenting the true facts of the case and was trying to conceal something, which made the entire prosecution story doubtful.(Para 24 to 35) (E-6)

Case law Cited:
Mohar Rai Vs State of Bihar, (1968) 3 SCR 525,State of Gujarat Vs Bai Fatima, (1975) 2 SCC 7, Lakshmi Singh & Ors Vs State of Bihar, (1976) 4 SCC 394, Nand Lal & Ors Vs State of Chhattisgarh, (2023) 10 SCC 470, Lakshmi Singh & Ors Vs State of Bihar,(1976) 4 SCC 394, State of Rajasthan Vs Madho (1991) Supp (2) SCC 396,State of M.P. Vs Mishri Lal (2003) 9 SCC 426 & Nagarathinam Vs State (2006) 9 SCC 57-referred to.

List of Acts
Criminal Procedure Code, 1973, Indian Penal Code,1860.

List of Keywords
non-explanation of injuries, credit-worthy, ballam, farsa, corresponding injury,gun shot injury, sample of blood stains, cross-examination, independent witness, daughter-in-law, benefit of doubt.

Case Arising from
CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 1267 of 1984
From the Judgment and Order dated 25.09.2025 of the High Court of Judicature at Allahabad.
Lohar & Ors Vs. State

Appearances for Parties
Counsel for Appellant(s)
Alok Ranjan Mishra, Ashok Kumar Pandey, G.S. Chaturvedi, Rohit Shukla Viveka Nand Rai
Counsel for Respondent(s)

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Vivekanand Rai, learned counsel for the surviving appellant no.3 and Sri Rajesh Kumar Gupta, learned AGA for the State.

2. The instant appeal has been filed by the appellants being aggrieved by judgment and order dated 04.05.1984 passed by the Ist Additional Sessions Judge, Mathura in S.T. No. 272 of 1983 whereby the appellants herein were convicted for the offence under Section 304/34 IPC and were sentenced to undergo seven years rigorous imprisonment with fine of Rs. 1,000/- and in default of payment, six months further imprisonment. They were further convicted and sentenced under Section 452 IPC and were directed to undergo one year rigorous imprisonment. They were also convicted and sentenced for the offence under Section 323/34 lPC and

they were directed to undergo six months imprisonment with a fine of Rs. 500/- and in default of payment of fine, they were further directed to undergo three months simple imprisonment.

3. During the pendency of the instant appeal, the appellants no.1 and 2 have died and their appeal was abated on 23.10.2019. The appellant no.4 has also died and his appeal was also abated vide order 28.08.2025. Thus the instant appeal is surviving only on behalf of appellant no.3, who is represented by Sri Vivekanand Rai, Advocate .

4. As per the prosecution story, the brief facts are that the deceased Jeevan was the son of Hukami. Hukami had four sons namely, Nathhi, Lohare, Jeevan and Kishan. All the four brothers were residing together in a joint family. Nathhi died issueless leaving behind his widow Jhanjhaniya. Jhanjhaniya has also died prior to the occurrence of this case. After the death of Nathhi and Jhanjhaniya, all the three brothers namely Lohare, Jeevan and Kishan used to cultivate the land held by Nathhi and Jhanjhaniya. In the instant case, Lohare is the main accused and the other three appellants namely Bhojpal, Bhima and Ram Hari are the sons of Lohare. Injured P.W. 1 and Girraj are the sons of deceased Jeevan.

5. As per the prosecution case, the accused Bhojpal used to look after the cultivation and lands of the family. However, his intentions became bad and he used the ornaments and money belonging to the deceased Jeevan and his sons. The informant Sonpal asked the accused Bhojpal to partition the plot of land held by Jhanjhiniya, then the accused Bhojpal has disclosed that the said plots were in his name and refused to partition the said plots. Thereafter the complainant came to know that the accused Bhojpal had manipulated and got his name mutated over the plots held by Jhanjhiniya. Thereafter, a Panchayat was called. As per the the decision of Panchayat, two bighas of land belonging to Jhanjhiniya came in the share of informant Sonpal and one bigha to his uncle Kishan Singh. The informant Sonpal started cultivating the land of two bighas belonging to Jhanjhiniya w.e.f. July, 1981.

6. Kishan The uncle of informant has also filed a revenue case against Bhojpal. Deceased Jeevan and his son Sonpal used to look after the said case lodged by Kishan. The said case was pending before the Sub-Divisional Officer, Chhata. It is the case of the Prosecution that due to the said case filed by Kishan, there was enmity between the accused-appellants herein with the informant and the other family members. In the aforesaid backdrop, it is stated that on 16.03.1983 at about 8:00 A.M., the informant P.W.1, Sonpal, his brother Girraj and his father Jeevan were present at their house at village-Rehada. They were making preparation for reaping the crops. It is the case of the prosecution that the accused Ballo over heard the talks of complainant and his father with regard to the reaping of the crops. Soon thereafter, the accused Lohare, Bhojpal, Bhima, Ramhari along with other accused persons namely Mahendra, Khema, Lal Chand, Udai Chand Ballo and Moharpal came over the house of the informant. The accused Lohare was armed with Bhala (spear), accused Ballo was armed with a Farsa and rest of the accused persons were armed with lathi. Accused Bhojpal assaulted the deceased Jeevan with lathi. All the other accused persons were armed with lathi and caused injuries to Sonpal, Girraj, Smt.

Kashmiri Devi w/o- Jeevan and Smt. Rama Devi w/o- Sonpal and due to the injury, the deceased Jeevan became unconscious. On hearing of noise of scuffle, the witnesses Narain, Chhanno and Bhoji reached on the spot. Thereafter, the accused persons ran away from the spot. The accused Lohare fell down on a log of wood and sustained some injuries. The report of the aforesaid incident was lodged by the informant Sonpal at Police Station-Barsana on 16.03.1983 at 1:30 P.M., on the basis of which the FIR being Case Crime No. 26-A/83 under Sections 147, 148, 452, 307, 149 IPC was registered. Thereafter, the medical examination of the injured persons namely, Jeevan, Kashmiri Devi, Sonpal, Girraj and Rama Devi was conducted on 16.03.1983 at around 6:15 P.M. to 7:00 P.M. The following injuries were found on the injured accused Jeevan:

"(1) Lacerated Wound 6 Cms. X 1 Cm X bone deep on right side of Head, 9 Cms. above the right ear.

(2) Contused Traum□tic Swelling on whole right hand.

(3) Abrasion 3 Cms. X 1.5 Cms. out-side of right cheek.

General condition poor, unconscious. Injuries No.s 1 and 2 were kept under observation and were advised X-ray.

Injuries were caused by blunt weapon. Duration half day.

2- Injuries of Smt. Kashmiri Devi, w/o- jeevan:

(1) Contusion 8 Cms. X. 2.5 Cms. on lateral side right arm, middle.

(2) Cont□sion 10 Cms. X 5 Cms. X 4 Cms. below injury No. 1.

(3) Traumatic Swelling on whole of the lower right fore-arm. Advised X-ray.

Injuries were caused by blunt weapon. Duration half day.

3- Injuries of Sonpal P.W.-13-

(1) Lacerated Wound 6 Cms. X-1 Cms. X bone deep Lt.Side Head. Advised X-ray.

(2) Contused traumatic swelling on left side of whole of neck. X-ray advised.

(3) Constusion 3 Cms. x 2 Cms. on back of lower part of left fore-arm.

Injuries were caused by blunt weapon. Duration Half-day.

4- Injuries of Girraj:-

(1) Contusion 4 Cms. x 4 Cms. on back of left arm.

(2) Abraded contusion 6 Cms. x 1.5 Cms. back on the upper left fore-arm.

(3) Abraded contusion 4 Cms. x 1 Cm. left side chest.

(4) Contusion 3 Cms. x 1.5 Cms. left scapula. Injuries were caused by blunt object. Dureation half a day.

5- Injuries of Smt. Rama Devi w/o- Sonpal:-

(1) Contusion 1 Cm. x 1 Cm. on the back of top of left index finger.

Caused by blunt object. Duration half-a-day.

7. The deceased Jeevan was remained admitted in the District Hospital, Mathura for about 3-4 days where the doctors advised him to be taken to Medical College, Agra. However, the deceased was taken to a private hospital at Chhata. He succumbed to his injuries after 5-6 days. It is claimed by the prosecution that the deceased died due to the injuries sustained by him in the aforesaid incident. Subsequent thereto, the offence under Section 304 IPC was also added. With regard to the same incident, another FIR being Case Crime No. 26 of 1983 being cross case was also lodged on behalf of the accused persons as the accused Lohare had also sustained the injuries in the said incident and he was examined on 18.03.1983 by Dr. Shukla. He found one lacerated wound 1.5 cms. x 0.5 cm. on the lower lip in front of right lower teeth of Lohare. The cross case was registered by the accused Lohare on 16.03.1983 at 12:30 P.M. under Section 307 IPC against the informant Sonpal, his brother Girraj and one Happo.

8. The investigation was carried out and thereupon the charge sheet was filed against the ten accused persons for the offence unders147, 323, 452, 304, 149 IPC. Thereupon the case was committed for trial and the charges were framed against all the accused. They denied the charges and claiemed trial. The prosecution in support of its case examined P.W.1 Sonpal who is the informant as well as the eye witness of the occurrence, P.W.2, Sri Narain and P.W.4. All are also eye witnesses of the incident. P.W.3 is the wife of the deceased Jeevan and also an injured witness. P.W. 5 is Dr. A.K.Gautam, who is the radiologist of the District Hospital, Mathura and has conducted the X-ray examination of Smt. Kashmiri Devi and Sonpal. He also conducted the postmortem on the dead body of the deceased on 26.03.1983 and found a stitched wound measuring 6 c.ms. x 1.5 c.ms.on the head of the deceased as also abrasions and contusions. All these injuries were corresponding to the injuries found on the persons of the deceased by Dr. D.R. Sen. On internal examination Dr. Gautam Found that the parietal and temporal bone of the left side of the deceased were fractured. Dr. Gautam opined that the deceased died due to coma which is caused by injury no.1. P.W. 6 is Chaukidar Sri Sabhya who had taken the dead body for postmortem. P.W.7, Dr. D.R. Sen stated about the injuries of the deceased Jeevan, Smt. Kashmiri Devi, Sonpal, Girraj, Rama Devi. P.W.8 is S.I. Virendra Kumar Tiwari, the Investigating Officer, who investigated the case and submitted charge sheet against the accused persons.

9. After concluding the same, the trial court has convicted only the four appellants herein for the offences under Sections 323/34, 452 land 304/34 lPC and sentenced them as stated herein in above and rest of the accused persons were acquitted while giving them benefit of doubt.

10. Learned counsel for the appellant submits that since the complainant Sonpal had opened fire and caused gunshot injury to Bhojpal. Therefore, the appellant herein acted in self defence and thereby caused the injuries on the complaint side and during scuffle other injured persons also sustained injuries.

Therefore, since the appellant had acted in self defence, they are not liable to be convicted for the offences as alleged against them. It is further submitted by leanred counsel for the appellant that since the prosecution has failed to explain the injury sustained by the accused persons as well. Therefore, the prosecution story as stated is not reliable and the appellant are liable to be acquitted giving benefit of doubt. Learned counsel for the appellant-Bhima has further participated in the incident as alleged and he has been falsely implicated due to the animosity between the parties being the immediate family members due to property dispute. Learned counsel for the appellant further submits that as per the prosecution case, Lohare was armed with bhala and accused Ballo was armed with farsa. However, as per the medical examination report none of the injured had sustained any injury of bhala or farsa. Therefore, the entire story of the prosecution is nothing but a falsity.

11. Per contra, learned AGA submits that it is admitted case of the parties that there was animosity between them for property dispute within the family members, due to which the instant incident has been caused by the accused persons. It is further submitted by learned AGA that the prosecution case is fully supported by the medical examination report. Thus, the manner of incident as alleged is fully corroborated with the medical examination. Though, as per the prosecution, the appellant no.1 was attributed bhala and there is no injury of bhala as such. However, bhala is such a weapon, which can be used as lathis by using blunt side of it. Therefore, prosecution story cannot be doubted on this ground, which is otherwise fully supported by the prosecution witnessesl. The appellant no.3 was categorically attributed a lathi and there are corresponding injuries of lathi on the injured persons as well as the deceased person. Thus, the prosecution story qua the appellant no.3 is fully established and the appeal is liable to be dismissed. No interference is called for in the sentence awarded by the trial court to the appellants herein.

12. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case.

13. P.W.1 is the complainant Sonpal. Detailed description has been given by him with regard to the animosity between the parties in relation to the land owned by Jhanjhaniya after her death. According to this witness, the 10 accused persons including the appellants came to the house of the informant. The appellant Lohare was having bhala, Ballo was having farsa and other accused persons have lathis in their hands. The appellant no.3 was attributed lathi by this witness. First of all appellant no.2, Bhojpal had assaulted with lathi on his father. Thereupon all the other accused persons had assaulted his father, his brother Girraj, his mother Kashmiri Devi and his wife. The accused persons had assaulted his mother and wife also with lathis. Due to the injuries sustained by his father, he became unconscious. Hearing of noise of scuffle, the witnesses Narain Singh, Chhanno and Bhoji had gathered and intervened, thereafter the accused persons ran away from the spot. It is categorically stated by this witness that to save themselves they had not assaulted with the lathis to any of the accused persons and it has been explained that the accused Lahare had fell down on the log of wood lying in their house and due to which

he had sustained injuries and he had seen that blood was oozing out from the person of Lohare. After the incident of assault, they called for a tractor and thereupon they had carried the injured to the Police Station Barsana at around 12:00 to 1:00 P.M. After reaching the police station, they had scribed the report. He has proved the written report submitted in the police station. The injured were sent for treatment to the hospital at Mathura where their medical examination as conducted and his father was admitted for 3-4 days in the hospital. However, his condition did not improve. Thereafter, the doctors had suggested to take him to the hospital at Agra. As they were poor persons, they did not carry him to Agra for treatment rather took him to Chhata and got his treatment by a private doctor. After 5-6 days of carrying his father to Chhata, his father had died . Thereafter, he had carried the dead body of his father to the Police Station Barsana and the dead body was inspected by the police officials and the same was sealed and sent to Mathura for postmortem. He has further stated that with regard to this incident, the Investigating Officer has not recorded his statement and he further stated that before the date of deposition before the court, he has not given any statement any where. He has told his ignorance with regard to any compromise with Bhojpal for agricultural field of Jhanjhaniya so as Bhojpal would remain the owner of the said agricultural field.

14. P.W.1 has further stated in his cross-examination that the accused persons had come to the house of this witness and entered in the house and assaulted them. The accused had not assaulted near the temple. The Investigating Officer has tilted the case against them and that no one came to interrogate them. He had not shown the place of incident to the Investigating Offier. It is further stated by P.W.1 that the accused persons who were having the ballam and farsa. This witness has witnessed the use of ballam and farsa. It is further stated by this witness that before lodging report at the police station, the accused persons lodged report against them because they took some time to arrange a tractor and reached the police station along with the injured persons.

15. P.W.2 is Narain Singh son of Johari, who is an independent witness. He states that on the date of incident in the morning at around 8:00 A.M., he was going towards his field. When he passed through the house of the deceased, he heard the noise, thereupon he went there in the house of Jeevan where he saw that all the ten accused persons were present there. Lohare was armed with ballam, Lohare was with farsa and other accused persons were armed with lathis. The accused Bhojpal had assaulted Jeevan on the head by lathi and all the accused persons have assaulted Jeevan and other injured persons. Due to the injury sustained by Jeeven, he became unconscious. He had intervened and thereupon the accused persons had left the place of incident. He admits that there was a dispute with regard to the agricultural land of Jhanjhaniya between the parties. He further states that with regard to this incident, the Investigating Officer had not recorded his statement while his house was about 300 steps away from the place of incident. The incident had taken place in the courtyard of the house of Sonpal. Near the house of Sonpal, there is a temple. However, he had not seen any incident near the temple. The P.W.2 has not given any statement to the Investigating Officer that the accused were assaulting near temple. He is not aware who sustained the injuries

with farsa and bhala. After the incident, he had not seen the Investigating Officer in his village. According to him no injury was sustained by Lohare and Bhojpal. No gun shot was fired at the place of incident. After two and half hours of the incident, he had also gone to the police station along with the injured persons. In the courtyard of Sonpal, the bood had oozed out and he had seen the blood stains in the courtyard.

16. P.W.3 is the injured Kashmiri, wife of deceased Jeevan. According to this witness, on the date of incident at around 8:00 A.M., she was cooking food in her house and her... husband and son were present in the house. Her husband was sitting in the kitchen and she was serving food to him. The accused Bhojpal came to her house. Along with the other accused persons including the appellants herein also came there. They were armed with ballam, farsa and lathis. Bhojpal while entering in the house had assaulted on the head of her husband. Thereupon the other accused persons had also assaulted her husband with lathis. The accused persons thereafter had also assaulted her son Sonpal, Girraj and also herself along with her daughter-in-law. Having heard the noise, the witnesses Narain, Singh, Chhanno and Bhoji also gathered there and thereafter the accused persons ran away from the spot. Thereafter she along with her both sons and daugher-in-law went to Barsana Police Station. They were referred to Mathura where their medical examination was conducted and due to such injuries, her husband died after ten days. It is further stated in the cross-examination that no witness was examined by the Investigating Officer nor he visited the village nor they were interrogated. The assault had taken place inside their house and no incident took place near the temple. She has denied any statement having been given to the Investigating Officer. It is further stated by this witness that after sustaining the injuries with lathis, she became unconscious and she did not know who assaulted her son with ballam. She is not aware that any other FIR was lodged with regard to the said incident. She had denied the suggestions that the assault took place near the temple. She came in between and sustained injury.

17. P.W. 4, Chhanno is also an independent witness. He has also supported the prosecution case as stated in the FIR and supported by the other witnesses. In the cross-examination, this witness states that he did not belong to the family of the informant or the accused persons. Though, they are different parties in the village but he did not belong to any party. His house is about 200 steps away from the place of incident. When he heard the noise, at that time he was coming from the house of Mewa and was going towards his house. On the date of incident itself the Investigating Officer has questioned him and had visited the village. He had recorded the statement as well as various other persons of the village. Therefore, he had gone to the house of Sonpal and had also inspected the spot where the incident had taken place. The place of incident was shown by the informant and his brother. However, he was not aware whether he had gone towards the temple. He further stated that he was not aware that the accused persons were armed with ballam, farsa and lathis. Some of the persons were assaulted with lathis and no injury was sustained by Lohare and Bhojpal with gun shot or lathi. The blood stains were in the house of Sonpal, which were sealed by the Sub-Inspector and the memo of recovery was prepared.

18. P.W.5, Dr. A.K. Gautam is the radiologist at the District Hospital, Mathura

and according to him, no abnormality was seen injury sustained by Kashmiri and Bhojpal as per the X ray report. He had conducted the postmortem of the deceased Jeevan on 26.03.1983. This witness has also proved the injuries sustained by the deceased as well as the other injured persons. In the cross-examination, he has also explained the injuries, X ray and postmortem reports of Bhojpal and Lahore and in the radio opaque he has found around 70 round and heavy metal on the lower part of the chest of Bhojpal which appeared like pellets. The fractures on the body of the deceased, which were found by him. The fracture on the head can be caused due to hit with the hard objects.

19. P.W.6, Samya chawkidar is a the formal witness of the sealing of the dead body of the deceased Jeevan after the inquest was conducted. Thereafter the dead body was taken to the hospital for postmortem and then it was handed over to the family members.

20. P.W.7 is Dr. D.R. Sen, who was posted as Emergency Medical Officer at the District Hospital, Mathura on 16.03.1983 when Jeevan, Kashmiri Devi, Sonpal and Girraj and Rama Devi were brought to the police station and he had examined the injuries sustained by them. He had proved the injuries sustained by the aforesaid persons. According to this witness the injuries no.1 and 2 on the dead body of the Jeevan were kept under observation, injury no.3 was simple in nature and injury no.4 was caused by hard and blunt weapon. The injured Kashmiri Devi had also sustained three injuries, the two injuries were simple in nature and injury no.3 was kept under observation. The injured Sonpal had sustained three injuries. The X ray was advised with regard to injury no. 1 and 2. There was a complaint of pain on the back of the chest, however there was no visible injury. The injured Girraj sustained four injuries. Rama Devi sustained two injuries. As per the opinion of this doctor all the injuries were possible caused by the lathi on 16.03.1983 at about 8:00 A.M. He has proved the aforesaid injury report. He has also admitted in the cross-examination that the said injuries were possibly caused due to fall. He further states that on 16.03.1983 at around 3:00 P.M., he had also examined the accused Bhojpal and three injuries were found on his body. Injury no.3 was a fire arm injury and injury no.1 and 2 were the injuries with lathi. The said injury report was also proved by the witness.

21. P.W.8 is the Investigating Officer of the instant case who stated that on 16.03.1983 at around 1:30 P.M. the informant Sonpal came to the police station and lodged the report, which was recorded by the Head Moharrir Shiv Karan Singh and relevant entries were made in the general Diary. After making investigation in the matter he recorded the statements of Sonpal. He went for the spot inspection in the village and in the village he has recorded the statements of Chhano and Bhoji and also inspected the house of the accused persons. However, from none of the accused person, any incriminating material was recovered. He had taken the sample of the blood stained and plain soil from near the temple. Memo of the same was prepared and spot memo was also prepared. The houses of the accused persons were also inspected, inquest report was prepared and the documents were received after postmortem. Thereafter, the charge sheet was submitted on 30.04.1983 against the accused persons. The sample of blood stained soil and plain soil was not

sent by him for chemical examination. He came to know regarding the property dispute between the parties and during the investigation, he came to know that the mother of the accused Bhojpal and Jhanjhaniya were the real sisters. According to the witnesses, the incident started at the house of Jeevan and had continued up to the temple. The present case and the case and the case crime no.26 were related to the same incident. In case crime no. 26, the informant Lohare told that the incident had taken place near the temple and during the investigation, he came to know that Bhojpal, who is an accused in the said incident had sustained gun shot injury. He has not taken the sample of blood stains and plan soil from the house of Jeevan and he has denied the suggestion that on the indication of Bhojpal, he had collected the blood stained and plain soil from near the temple.

22. D.W.1 is Dr. Rama Shankar Shukla, who was posted as Mdedical Officer at Primary Health Centre, Barsana. He had conducted the medical examination of Lohare at 9:00 A.M. in the morning. He has submitted the medical report in the Court and opined that the injuries were caused due to assault by lathi. These injuries could have been caused on 16.03.1983 at around 8:00 A.M. The injury no.1 was inside the mouth and there was no injury outside. Those injuries could not be of five days old. With regard to the same injury, he opined in the Court that these injuries were five days old and subsequently studying the books, he came to the conclusion that these injuries were of 3-5 days old, and could be caused due to fall and the injury sustained on the tooth.

23. D.W.2 is the Head Constable Shivdas who was posted at P.S. Barsana. He stated that on 16.03.1983, he was posted as Head Moharrir at the police station and at around 12:30 P.M., a report was lodged by Lohare on the basis of which an FIR was registered and entries were made in the General Diary.

24. From the aforesaid evidence as available on record, so far as the injuries sustained by the accused Lohare is concerned, it is categorically admitted by D.W.1 himself that the said injury was 3-5 days old prior to the date of incident. Therefore, the injuries sustained by Lohare has no connection with the incident. From the depositions of witnesses P.W.1, P.W. 2, P.W.3 and P.W.4, out of which two are the independent witnesses, the incident had taken place inside the house of the informant and where the accused persons allegedly armed with ballam, farsa and lathis had assaulted the deceased and other injured. There is no corresponding injury, which can be attributed to ballam and farsa. However, all the injured persons had sustained injuries with hard and blunt weapon. There is a possibility that ballam and farsa would have been used from the other side i.e. the hard and blunt side and indisputably all the injuries were sustained by the injured persons with hard and blunt weapon and the appellant no.3 had been categorically attributed with lathi in the instant case. Though he has tried to dispute is presence on the spot and has claimed false implication.

25. However, all the prosecution witnesses in categorical terms had attributed the presence of the appellant no.3 on the spot armed with lathi. There is an explanation given by the prosecution that while running back, he fell down on the log of wood and sustained injuries.

26. There is an explanation given by the prosecution that while running back,

accused Lohare fell down on the log of wood and sustained injuries. Howevere, a per medical opinion, the injuries sustained by Lohare were 3-5 days old, those were not caused in the incident. However, there is no iota of explanation on behalf of prosecution for the injuries sustained by one of the accused persons namely, Bhojpal who had also sustained not by the lathis but by a gun shot injury. The prosecution is totally silent with regard to the injury sustained by the accused Bhojpal and the injury sustained by Bhojpal is fully proved by P.W.5 himself who was produced on behalf of the prosecution according to which the firearm injury was sustained by the accused Bhojpal on the left side of lower chest and the pellets were also found on the body of Bhojpal in the X ray report. P.W. 5 had conducted the X ray of Bhojpal on 17.03.1983 i.e. one day after the the incident. However, there was no material available to suggest how and in which manner, Bhojpal had sustained the injury.

27. In his statement under Section 313 Cr.P.C. it was explained by the accused Bhojpal that on the date of incident, he was coming from the agricultural field, then he saw that near the temple Girraj and Jeevan were assaulting his father near temple. Sonpal and one other person were also present there and Sonpal was assaulting him with a gun and therefore, to save him Ballo and Mahendra had assaulted with lathi and therefore, his father lodged a report and medical examination was also conducted.

28. It is also an admitted fact in the instant case that the appellant no.1 had also lodged an FIR against the informant and other persons prior to the instant FIR lodged by the informant. With regard to this injury sustained Bhojpal, there was no explanation given by the prosecution and the defence has categorically proved the fact that the accused Bhojpal has sustained the injury in the incident. Thus it was the duty of the prosecution to explain the injury sustained by the accused Bhojpal with regard to which, the prosecution is totally silent, meaning thereby that the prosecution is not coming with true facts of the case and trying to conceal something. Therefore, the entire story on behalf of the prosecution becomes doubtful.

29. In **Mohar Rai vs. State of Bihar, (1968) 3 SCR 525**, the Apex Court has observed as follows:

"The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances ***the prosecution had a duty to explain those injuries.***

..... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

30. In **State of Gujarat vs. Bai Fatima, (1975) 2 SCC 7,** the Apex Court has observed as under:

"In a situation like this when the prosecution fails to explain the injuries on

the person of an accused depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self - defence.

(2) It makes the proseution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It dos not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

31. In **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394,** the following observations have been made by the Apex Court :

" It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosedition one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where ***the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by***

the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs *the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."*

32. In **Nand Lal and others vs. State of Chhattisgarh, (2023) 10 SCC 470**, the Apex Court has relied upon the above observations made in Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394, the Apex Court has further placed reliance in State **of Rajasthan vs. Madho (1991) Supp (2) SCC 396, State of M.P. vs. Mishri Lal (2003) 9 SCC 426 and Nagarathinam vs. State (2006)9 SCC 57**, while acquitting the accused persons due to non explanation of injuries of accused by the prosecution.

33. Thus from the aforesaid judgments of the Apex Court, it can be safely concluded that non explanation of injuries sustained by the accused person by the prosecution, makes the prosecution story doubtful. That means the prosecution is not coming with clean hands and there is an attempt to suppress the real facts. Therefore, the prosecution witnesses becomes unreliable, and in case, the defence has given the explanation of the entire incident that becomes more reliable. Therefore, the benefit of doubt is to be accorded to the accused persons.

34. In the instant case, the prosecution has completely failed to explain the injury sustained by the injured Bhojpal, which has been sufficiently proved in the instant case by the defence. Thus it can be safely concluded that the prosecution is not coming with any explanation with regard to the injury sustained by accused Bhojpal. Thus the prosecution story is not reliable and benefit of doubt is to be given to the accused.

35. Accordingly, the instant appeal on behalf of the appellant no.3, Bhima is **allowed**. The impugned judgment and order dated 04.05.1984 passed by the trial court convicting and sentencing the appellant no.3 herein is hereby set aside. The appellant no.3, Bhima is hereby acquitted of the charges leveled against him.

36. The appellants no.1, 2 and 4 have already died and the appeal on their behalf was abated by previous orders. The appellant no.3 is on bail. He need not surrender. His bail bonds are cancelled and Sureties are discharged.

37. Office is directed to send a copy of this judgment along with the record to the trial court to be consigned as no further action is required in the instant case.

(2025) 9 ILRA 891
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Criminal Appeal No. 6400 of 2007

Islam @ Paltoo ...Appellant
Versus
State of U.P. ...Respondents

Counsel for the Appellant:

Mayank Bhushan

Counsel for the Respondents:
G.A.

Issue for Consideration

The appellant was accused of enticing and taking away a minor girl. The trial court convicted the appellant because the victim was a minor, making her consent immaterial for the offenses.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 363, 366, 376-The court acknowledged the Supreme Court judgment (Independent Thought Vs. Union of India,2017) which struck down Exception 2 to section 375 IPC-Since, the occurrence took place in 2005,the old law applied-As the victim was above 16 and physical relations occurred after their marriage was solemnized, the act fell under the protection of Exception 2 to section 375 IPC-The appellant cannot be held guilty for commission of rape-Appeal allowed.

Held

The court distinguished between "taking" or "enticing"-Citing the judgment in S. Varadrajan Vs. State of Madras, the court ruled that simply asking the victim to accompany him on a trip was not sufficient to establish "enticing" or "taking"-Since the victim left on her own free will, there was no evidence of active inducement, allure, or manipulation by the appellant to cause her to leave her guardian-The evidence showed the couple performed Nikah. The court considered the victim was a Muslim girl above 16 years who had attained puberty, allowing her to enter a marriage contract under Muslim Personal Law. The appellant was acquitted of all charges.(Para 13 to 26) (E-6)

Case law Cited

Thakorlal D.Vadgdama Vs The State of Gujarat AIR (1973) SC 2313, S.Varadarajan Vs State of Madras, 1965 AIR 942, Independent Thought Vs Union of India, AIR (2017) SUPREME COURT 4904-referred to.

List of Acts

Criminal Procedure Code, 1973,Indian Penal Code, 1860.

List of Keywords

'taking' or 'enticing' ,Section 164 CrPC, Nikah, birth certificates, mutual consent, POCSO Act, PCMA, Hindu Marriage Act,1955, Dissolution of Muslim marriages and Divorce Act, 1939, aggravated penetrative sexual assault, "wives", statutory rape, ila, zihar, khula, mubarat,Prohibition of child marriage Act, 2006, "minor" "contracting party" Majority Act,1875, Muslim Personal law (Shariat) Application Act, 1937, Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla.

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 6400 of 2007
From the Judgment and Order dated 19.09.2025 of the High Court of Judicature at Allahabad.
Islam @ Paltoo Vs. State of U.P.

Appearances for Parties

Counsel for Appellant(s)
Mayank Bhushan
Counsel for Respondent(s)
G.A.

(Delivered by Hon'ble Anil Kumar-X, J.)

1. Heard learned counsel for the appellant and learned AGA for the State.

2. This criminal appeal has been preferred against the judgment and order dated 11.9.2007 passed by Additional Sessions Judge, Court No.8, Kanpur Dehat in Sessions Trial No.51 of 2006 (State vs. Islam @ Paltoo) arising out of Case Crime No.307 of 2005, under Sections 363, 366 and 376 IPC. Appellant was found guilty under Section 363 IPC and was sentenced for five years and fine of Rs. 1,000/-. Similarly, he was held guilty for offences under Sections 366 and 376 IPC. He was sentenced for seven years under Section 366 IPC along with fine of Rs. 1,000/- and

was also sentenced for seven years and fine of Rs. 2,000/- for offence under Section 376 IPC.

3. On September 25, 2005, a written complaint (Ex. Ka. 1) was submitted by informant Fazal Ahmad. It was alleged that his daughter, aged approximately 16 years, had gone outside to answer the call of nature when she was enticed away by the appellant and two other persons. In response to the complaint, an FIR (Ex. Ka. 5) was registered on September 25, 2005, based on the application filed by the informant. The victim was recovered on September 25, 2005, and was subsequently produced for medical examination. Her statement under Section 164 Cr.P.C. was recorded. After the investigation was completed, a charge sheet was submitted against the appellant. Charges u/s 363, 366, and 376 IPC were framed against appellant.

4. Seven witnesses were produced by the prosecution to prove the charges against the appellant. PW-1, the victim, testified that she had gone outside to answer the call of nature on August 25, 2005, and met the appellant there. Appellant asked her to accompany him on a trip. Together, they went to Kalpi, where she stayed with him for a day. Subsequently, appellant took her to Bhopal, where he rented a room for her and she stayed there for a month. During her stay in Bhopal, she was repeatedly raped by the appellant. When his money ran out, he abandoned her in Bhognipur, where she was rescued by the police personnel.

5. PW-2, Fazal Ahmad, stated that his daughter was enticed away by the appellant on August 25, 2025. She was recovered by the police and he met with her at police station. She told him that she had been taken by the appellant to Kalpi and Bhopal, where she had been forcibly raped. PW-3 Jahora Bano, the mother of the victim, stated that her daughter was enticed away by the appellant on 25.8.2005. She was recovered by police personnel after a month. After her recovery, she told her that the appellant had often committed rape against her.

6. PW-4, Dr. Achla, stated that the victim was brought before her on September 26, 2005. She further stated that there were no injuries, internal or external, on the victim's body parts. PW-5, Dr. R.K. Gupta, stated that the victim was referred to EMO Mahila Chikisalaya Kanpur Nagar for determining her age. PW-7 S.I. Omkar Nath Singh, conducted the investigation in this case and he proved spot map Ex. Ka. 7 and charge sheet Ex. Ka. 10.

7. The prosecution, after examining the above witnesses, closed its evidence. The appellant's statement was recorded under Section 313 CrPC, where he stated that he had performed Nikah with the victim on August 29, 2005. He further mentioned that this marriage was performed by their mutual consent. A registered compromise between them was also executed before Registrar Kalpi, Kanpur. In defence, the appellant produced certain documents, including Nikahnama Ex. 27 Kha, registered compromise Ex. 29 Kha, and the victim's and appellant's birth certificates. The defence witness, DW-1 Khwaja, was also examined.

Findings of learned Trial Court

8. Trial Court has considered the testimony of the victim and her mother, P.W.-3 Jahoora Bano. It was observed that

victim stated that she was taken away by the appellant, who asked her to accompany him on a trip. They boarded a truck after covering a distance of half an hour and reached Kalpi, where they stayed for a day and performed a Nikah before departing for Bhopal. However, the Trial Court ruled that it cannot be assumed that the victim was taken away or enticed by the appellant by referring to her statement made during cross-examination. She stated that her nikah with appellant was performed at Kalpi, where they stayed for a day at one of the appellant's relatives. Thereafter, she left with appellant for Bhopal and stayed there with him in a rented room. They resided there happily for a month as a married couple. The Trial Court has also observed that deposition of P.W.-3 Jahora is unreliable. It noted that she had stated that she had gone to answer the call of nature just two to three hours before the victim, making it impossible for her to have witnessed the incident. But considering that victim was found minor at the time of incident and the consent of victim is immaterial , it convicted the appellant under Sections 363, 366, and 376 of the Indian Penal Code.

Arguments of learned counsel for the appellant

9. The learned counsel for the appellant argues that the victim admitted in her cross-examination that she joined the appellant and resided with him for a month. She also stated that they resided in a rented room in Bhopal. The counsel contends that it's impossible for a minor girl, enticed by the appellant, to remain unnoticed while travelling from his village to Kalpi (Kanpur) and Bhopal. Since they were both residing in a rented room in a residential building with other tenants and the landlord, it cannot be assumed in given circumstances that presence of minor girl with any person will remain unnoticed. Prosecution claims that victim was an abductee. Abductee in all circumstances would offer resistance against her abduction, particularly if she is residing in a building inhabited by other persons. Again it cannot be said that no one will notice her resistance. The victim also admitted that they reached Kalpi by bypass, boarded a truck, and covered the distance by walking. She stated that they stayed in the appellant's brother-in-law's house in Kalpi, their nikah was solemnised at Kalpi and they left for Bhopal after solemnization of marriage where they lived as a happily married couple. Therefore, it's evident that the victim left with the appellant on her own free will, performed the Nikah, and entered into a nuptial relationship.

10. It was further submitted that Nikahnama was produced by the appellant in his defence, and no rebuttal was made by the prosecution. While the prosecution claims that the victim was approximately 16 years old at the time of the incident, her ossification test indicates that she was older than 16. Even Dr. Achala, who has acknowledged the principles laid down by Modi's jurisprudence, admitted during her cross-examination that the victim's age could be two years more or less than 16. Considering these principles, it is evident that the victim was an adult when she solemnised her marriage with the appellant. Therefore, the allegations under Section 366 IPC against the appellant are not substantiated.

11. The prosecution has failed to prove the charges under Sections 363 and 376 of the Indian Penal Code. The victim herself has admitted to travelling in a truck

with the appellant. In such circumstances, it is highly unlikely that she was enticed or abducted by him. Age of victim, as stated by doctor, seems to be above 18 years. Victim soon after leaving her house and reaching Kalpi performed Nikah with the appellant. It was only after the solemnisation of their marriage that they established a physical relationship. Therefore, the allegations against the appellant under Section 376 are also not substantiated. The victim and the appellant married with their consent, and the appellant was also a major at the time of their marriage. The age proof of the appellant was also produced before the trial court. In light of these circumstances, where a major boy and a major girl marry each other without any coercion or misrepresentation, no offence can be made out against the appellant. Hence, this appeal is liable to be allowed, and the impugned judgement of conviction should be set aside.

Arguments of learned AGA

12. Learned AGA has submitted that ingredients of Section 363 IPC are self explanatory. The moment a person takes or entices any minor girl under 18 years of age with an intention to keep her away from the lawful guardianship, he becomes liable for the offence. Victim was found to be of 16 years at the time of occurrence. If a person persuades any minor in a manner which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardianship, then such person becomes liable for the offence under Section 363 IPC even though minor has consented to leave his/her guardianship and to accompany the accused person. Consent of minor in such circumstances is immaterial and accused cannot take defence that minor on her own had accompanied him. Hence, in all circumstances, appellant cannot evade from culpability on the ground that minor had left with him out of her own free will.

Conclusion

13. In order to determine the culpability of appellant under section 363 and 366 I.P.C, it will be relevant to look into two factors. Firstly, whether she was enticed or taken away by the appellant? Secondly, whether victim was minor at the time she was allegedly kidnapped by the appellant? The offence of "kidnapping from lawful guardianship" is defined, thus, in the first paragraph of s. 361 of the Indian Penal Code :

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

14. It is evident that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. **Hon'ble Supreme Court in Thakorlal D. Vadgdama v. The State of Gujarat (AIR 1973 SC 2313)** has thoroughly discussed the distinction between "takes" and "entices" in following words :

"The expression used in Section 361, I.P.C. is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual

or constructive. This word merely means, "to cause to go," "to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. The two words "takes" and "entices", as used in Section 361, I.P.C. are in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361, I.P.C."

15. It is evident from **Thakorlal D. Vadgdama (Supra)** term "takes" as referred under Section 361 I.P.C means causing, with or without the use of force to move, escort or fall into possession. Taking does not need to consist of a single act. A whole series of acts could together constitute the act of taking. Similarly, "entices" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. The core difference is that "taking" a minor is a physical act of causing the minor to go with the offender, regardless of their consent. "Enticing", however, is a mental act where the offender uses manipulation or allure to influence the minor to go willingly, even if it's something they would not have done otherwise. In "taking" the minor's desire or mental state is irrelevant, but in "enticing", the minor's act is a direct result of the offender's inducement.

16. Now the point for consideration is the nature of evidence required to prove that victim was "taken" or "enticed" by appellant . In this context, it will be relevant to refer the observation made by **Hon'ble Supreme Court in S. Varadarajan vs State Of Madras, 1965 AIR 942**. In this case, daughter of informant frequently conversed with appellant and when her sister noticed her conduct, she informed her father. When her father asked victim of her conduct she said nothing but started weeping. Her father took her to one of his relatives and left her there to reside with them. On very next day, she left the house of her relative, called appellant and both of them proceeded to Mylapore where they went to the Registrar's office and got their marriage registered.

On the foregoing facts, it was held, "Here, we are not concerned with enticement but what, we have to find out is whether the part played by the appellant amounts to "taking", out of the keeping of the lawful L2Sup./64--3 246 guardian, of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan, She still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the

instance or even a suggestion of the appellant. In fact, she candidly admits that on the morning of October 1st, she herself telephoned the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or, anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her own side." After considering the above facts, it was held :-

"It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our, opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking".

17. In this case also, witnesses including parents and victim have not divulged any fact from were any inference can be drawn that victim was either enticed or taken by the appellant except making bald allegations of "enticing" and "taking". The victim's testimony in examination in chief that she was taken by appellant who asked her to accompany on a trip reflects that she was a consenting party; her mother has gone a step forward by deposing that she was behind her daughter when she was taken by appellant and could do nothing to stop him as nobody was present there to help her. The circumstances disclosed by victim also manifest that their elopement was premeditated. It is significant to note

that none of the prosecution witness has stated any such fact which suggests that appellant had done any such act from which it can be derived that he manipulated victim to go with him. Similarly, there is no whisper in testimony of either witnesses which suggests that he attempted to allure the victim to accompany with him. Deposition of victim in her cross examination reveals that she on her own will left with appellant possibly with an intent to marry her. Statement of victim that she was asked by the appellant to accompany him on a trip alone is not sufficient to establish the act of "enticing" and "taking". Act of "enticing" and "taking" means that accused has played some active role by which victim was allured or influenced to accompany him. In the foregoing circumstances it can be safely concluded that prosecution has failed to lead any evidence to suggest that victim was either "enticed" or "taken" by appellant. Hence offence under Section 363 I.P.C against appellant is not made out. Similarly, victim has categorically stated that she along with appellant reached Kalpi after leaving her house and Nikah with appellant was performed there. She stated that she stayed there for a day and then they left for Bhopal where they lived as married a couple. This evidence suggests that physical relationship between the two was established after their marriage was solemnised. Therefore evidence pertaining to kidnapping and abducting the minor in order to compel her to marry, or compel her to illicit intercourse is missing. Hence, offence under Section 366 is also not made out.

18. In continuation of above facts, it will be important to consider, whether marriage with minor even with her consent will make appellant liable for offence under Section 376

19. In this context, it would be appropriate to consider the age of the victim first. P.W-4, Dr. Achala, who had referred the victim for ossification test. She after referring to X-ray report has opined that her age was above sixteen years. However, she has also mentioned that age of victim in any circumstance could not be above 18 years. Considering that victim was above 16 years at the time of her marriage, it would be relevant to see that whether her marriage at the age of 16 years could be held legal? In this case, both parties are Muslim and have performed marriage as per Muslim rites and customs. The victim has admitted that her Nikah was performed at Kalpi and appellant has produced Nikahnama. It will be significant to refer Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla' . Article 195 lays down the pre requites of valid marriage under Muslim law and same is reproduced below :

"195. Capacity for marriage - (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians. (3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation - Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years."

20. Hence, evidence led before Trial Court leads to only one conclusion that victim aged above 16 years had married with appellant on her own free will. It will also be important to consider whether the said marriage violates the provisions of Prohibition of Child Marriage Act,2006 . Section 2 of this Act provides definitions of some of the relevant and important terms, as under:

"(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority." Section 3 of the Act holds that Child marriages are voidable at the option of contracting party being a child. Similarly, Section 12 of this Act says that if marriage of minor is solemnised by enticing or taking out of legal guardians, or is compelled by force to marry or is sold for marriage, such marriage is void.

21. Therefore, it is apparent from the Act that marriage in this case would at most be held to be voidable. Again question arises whether the provision of Prohibition of Child Marriage Act,2006 would override the provision of Muslim Personal Law (Shariat) Application Act 1937? Section 2, whereof, is reproduced herein under: -

2. Application of Personal law to Muslims.-

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

22. Taking into account the exception (2) of Section 375 of IPC and Prohibition of Child Marriage Act,2006, **Hon'ble Supreme Court in Independent Thought vs Union Of India, AIR 2017 SUPREME COURT 4904** held that sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. In opening paragraph of judgment, it was held, "1. The issue before us is limited but one of considerable public importance ? whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC) answers this in the negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not." Further in para28 and 31 , it was held,

" 28. Section 375 of the IPC defines 'rape'. This section was inserted in the IPC in its present form by an amendment carried out on 3rd February, 2013 and it provides that a man is said to commit rape if, broadly speaking, he has sexual intercourse with a woman under circumstances falling under any of Page 19 the seven descriptions mentioned in the section. (A woman is defined under Section 10 of the IPC as a female human being of any age). Among the seven descriptions is sexual intercourse against the will or without the consent of the woman; clause 'Sixthly' of Section 375 makes it clear that if the woman is under 18 years of age, then sexual intercourse with her - with or without her consent - is rape. This is commonly referred to as 'statutory rape' in which the willingness or consent of a woman below the age of 18 years for having sexual intercourse is rendered irrelevant and inconsequential."

"31. Therefore, Section 375 of the IPC provides for three circumstances relating to 'rape'. Firstly sexual intercourse with a girl below 18 years of W.P. (C) No. 382 of 2013 Page 20 age is rape (statutory rape). Secondly and by way of an exception, if a woman is between 15 and 18 years of age then sexual intercourse with her is not rape if the person having sexual intercourse with her is her husband. Her willingness or consent is irrelevant under this circumstance. Thirdly sexual intercourse with a woman above 18 years of age is rape if it is under any of the seven descriptions given in Section 375 of the IPC (non-consensual sexual intercourse)."

23. In the said judgement, provisions of IPC and POCSO Act were also discussed and it was held that that there is no difference between the definition of rape as laid down in IPC and POCSO, but definition of rape is somewhat more elaborate. Considering Section 42-A of POCSO Act, it was held that provisions of the POCSO Act will override the provisions of any other law (including the IPC) to the extent of any inconsistency. Considering the provisions of POCSO Act and IPC, it was observed, "98. ???. In sum, marital rape of a girl child is effectively nothing but aggravated penetrative sexual assault and there is no reason why it should not be punishable under the provisions of the IPC. Therefore, it does appear that only a notional or linguistic distinction is sought to be made between rape and penetrative sexual assault and rape of a married girl child and aggravated penetrative sexual assault. There is no rationale for this distinction and it is nothing but a completely arbitrary and discriminatory distinction."

24. Thereafter, Hon'ble Supreme Court further dealt with incongruity between the exception (2) of Section 375, Prohibiting of Child Marriage Act, Hindu Marriage Act and Dissolution of Muslim Marriages, 1955 and Divorce Act, 1939 and it was held by Hon'ble J. Deepak Gupta in Para 19, "It is obvious that while making amendments to various laws, some laws are forgotten and consequential amendments are not made in those laws. After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages and Divorce Act, 1939 also should have been suitably amended, but this has not been done. In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned."

Accordingly, Exception 2 of Section 375 I.P.C was struck down and it was held that :-

"88. In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:?

(i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;

(ii) it is discriminatory and violative of Article 14 of the Constitution of India and;

(iii) it is inconsistent with the provisions of POCSO, which must prevail.

Therefore, Exception 2 to Section 375 IPC is read down as follows:

"Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape".

It is, however, made clear that this judgment will have prospective effect.

89. It is also clarified that Section 198(6) of the Code will apply to cases of rape of "wives" below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code."

25. From the foregoing observations as held by Hon'ble Supreme Court in Independent Thought (supra), it is very much apparent that exception 2 of Section 375 IPC has been struck down on the ground that said provision is inconsistent with the provisions of POCSO Act and is also violative of Article 14, 15 and 21. But it has also been held that the said judgment of Supreme Court will have prospective effect. In this particular case, it is apparent that alleged occurrence had occurred way back in the year 2005. Therefore, appellant cannot be held guilty for commission of rape because victim at the time of occurrence was above 16 years and physical relations between the two had taken place after solemnisation of their marriage.

26. In view of the above, the present appeal is **allowed** and the appellant is acquitted of the charges.

27. Accordingly, judgment of conviction and order of sentence is set aside. The appellant is on bail and his personal bond is cancelled and sureties are discharged and further directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two month from today.

28. The Trial Court's record be remitted back along with copy of this judgment.

29. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

(2025) 9 ILRA 901
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Appeal No. 11573 of 2024

Smt. Nirmala Devi ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Ajai Kumar Srivastava, Amit Kumar Satsangi

Counsel for the Respondents:
G.A., Santosh Kumar Tiwari

Issue for Consideration
The main point of contention was whether an appeal against the rejection of an application filed under section 340 Cr.PC by the family court should be filed under section 19 of the Family Courts Act, 1984 or Section 341 CrPC.

Headnotes
A. Criminal matter-Criminal Procedure Code,1973-Section 340, 341 & Family Court Act,1984-Section 19-The Family Courts Act,1984, is a Special Act, and the Code of Criminal Procedure is a general act, therefore, the provisions of the Act,1984 prevails over the provision of CrPC-Section 19 of the Act,1984 provides not only the right and procedure but also the forum for filing an appeal against the order of the Family Court, directing it to the High Court and requiring it to be heard by a Bench consisting of two or more Judges(Division Bench).Appeal dismissed.
Held
The appellant filed an application u/s 125 Crpc for maintenance against respondent no.2-The appellant filed an application u/s 340 CrPC alleging that respondent no. 2 filed an incorrect/false affidavit regarding his income. The court held that Section 19 of the Act,1984 contains non-obstante clause and will prevail over Section 341 crpc concerning the forum and limitation for the appeal. An order passed u/s 340 Crpc is considered a final order, not an interlocutory order, because it finally decides the issue of whether a prima facie case is made out for filing a complaint for perjury. As section 19 allows an appeal from every judgment or order not being an interlocutory order, it covers the section 340 order –The court relied on the judgment in Jitendra Kumar Lakhmani Vs. State of U.P. & Another, which held that an appeal against a section 340 Cr.PC order passed by the Family Court would lie under section 19 of the Act,1984 and not section 341 Cr.PC-The present appeal is not maintainable.(Para 7 to 21) (E-6)

Case law Cited
Smt. Sufia Vs State of U.P. & 3 Ors (Application u/s 528 BNSS No. 33290 of 2025), State of A.P. Vs V. Sarma Rao & Ors (2007) 2 SCC 159, Shah Bahulal Khimji Vs Jayaben AIR (1981) SC 1786, Jitendra Kumar Lakhmani Vs State of U.P. & Anr. in Criminial Appeal No. 3030 of 2024, M.S. Sheriff Vs State of Madras (1954) 1 SCC 524-referred to.

List of Acts
Criminal Procedure Code,1973, Family Court Act,1984.

List of Keywords

Case Arising from

CRIMINAL APPELLATE JURISDICTION-CRIMINAL APPEAL No. – 11573 of 2024

From the Judgment and Order dated 16.09. 2025 of the High Court of Judicature at Allahabad.
Smt. Nirmala Devi Vs. State of U.P. & 3 Ors

Appearances for Parties
Counsel for Appellant(s)
Ajai Kumar Srivastava, Amit Kumar Satsangi
Counsel for Respondent(s)
G.A. Santosh Kukmar Tiwari

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

1. Heard Sri Chetan Prakash, Advocate, holding brief of Sri Ajai Kumar Srivastava, learned counsel for the appellant, Sri Pawan Kumar Dubey, Advocate, holding brief of Sri Santosh Kumar Tiwari, learned counsel for respondent nos.2, 3 and 4 and Sri D.P.S. Chauhan, learned AGA for the State.

2. The appellant-applicant has preferred the present criminal appeal against the judgment and order dated 10.10.2024 passed by the Learned Principal Judge Family Court, Prayagraj/Allahabad, in Misc. Case No. 414 of 2024, Police

Station Kydganj, District Prayagraj, whereby the application filed by the appellant under Section 340 Cr.P.C. (corresponding to Section 379 BNSS) read with Section 191, 193, 199 and 209 Cr.P.C. has been rejected.

3. Shorn of unnecessary facts, the prosecution's case is that the appellant has filed an application u/s 125 Cr.P.C. before the Principal Judge, Family Court, Prayagraj, for maintenance against opposite party no.2. During that proceeding, respondent no.2 had filed an affidavit regarding his income and liability as required in the case of **Rajnesh Vs. Neha & Another** reported in **(2021) 2 SCC 324.** Appellant filed an application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) for conducting a preliminary enquiry to file a complaint against the respondent nos.2, 3 and 4 on the ground that respondent no.2 had filed incorrect and false evidence through his affidavit and respondent nos.3 and 4 also supported that false evidence. The Principal Judge, Family Court, rejected that application vide judgement and order dated 10.10.2024, against which the present appeal has been filed.

4. A preliminary objection was raised by learned AGA as well as learned counsel for the private respondents that against the order passed by the Family Court, there is specific provision of filing an appeal u/s 19 of the Family Courts Act, 1984 (in short 'the Act, 1984') which would prevail under Section 341 Cr.P.C. (corresponding to Section 380 BNSS). Therefore, the present appeal is not maintainable as the appellant can file an appeal against the impugned judgment of the Family Court u/s 19 of the Act, 1984.

5. In reply to the above preliminary objection, learned counsel for the appellant has submitted that there is a specific provision under Section-341 Cr.P.C. (corresponding to Section 380 BNSS) for filing appeal against the rejection of the application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), therefore, merely because the Family Court has passed the order, appeal cannot be said to be not maintainable because Section 19 of the Act, 1984 also provides provision for filing appeal against the order passed by the Family Court.

6. The crux of the matter is whether an appeal against the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) passed by the Family Court, should be filed under u/s 19 of the Act, 1984 or u/s 341 Cr.P.C. (corresponding to Section 380 BNSS). To resolve this, it's pertinent to quote Section 19 of the Act, 1984, which is as follows:

"19. Appeal.-(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure,1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

7. From the perusal of Section 19 of the Act, 1984, it is clear that it provides, notwithstanding anything contained in Cr.P.C. except the exception given in Sub-section (2) of Section 19, the appeal against any order except the order of an interlocutory nature u/s 19 of the Act, 1984. Section 19(2) of the Act, 1984 provides that an appeal u/s 19 of the Act, 1984 would not lie if the Family court passes the order under Chapter IX of Cr.P.C. Chapter IX of Cr.P.C. provides the provision for maintenance u/s 125 Cr.P.C. as well as execution thereof. It is not in dispute that initially an application was filed by the appellant u/s 125 Cr.P.C., which comes under Chapter IX of Cr.P.C. But the impugned order, which was passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), does not come under Chapter IX of the Cr.P.C. For ready reference, Section 340 Cr.P.C. (corresponding to Section 379 BNSS) is being quoted as under:

"340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b)

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court

has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court

[or by such officer of the Court as the Court may authorise in writing in this behalf.] [Substituted by Act 2 of 2006, Section 6, for Cl. (b) (w.e.f. 16-4-2006). Prior to its substitution, Cl (b) read as under : - [(b) in by other case, by the presiding officer of the Court].]

(4) In this section, "Court" has the same meaning as in Section 195."

8. The Section 340 Cr.P.C. (corresponding to Section 379 BNSS) shows that it relates to conducting a preliminary enquiry before filing a complaint for giving false affidavit before a court in a judicial proceeding. Section 341 Cr.P.C. (corresponding to Section 380 BNSS) provides an appeal against the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS). Section 341 Cr.P.C. (corresponding to Section 380 BNSS) is being quoted as under:

"341. Appeal

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under Sub-Section (1) or Sub-Section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of Sub-Section (4) of section 95, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

9. From the above-quoted Section 341 Cr.P.C. (corresponding to Section 380 BNSS), it is also clear that if an order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is passed by a court (whether civil, criminal or revenue), then the appeal would lie before the Court which ordinarily hears the appeal against the order of that Court. Therefore, if an order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is passed by a civil Court, revenue court or criminal Court, the appeal would lie on the respective side to the appellate Court, even though the provision for conducting an enquiry and filing a complaint for giving false evidence has been provided in Cr.P.C. This Court has also considered this issue in the case of **Smt. Sufia Vs. State of U.P. And 3 Others** (Application u/s 528 BNSS No.33290 of 2025), decided on 03.09.2025, wherein the Court observed that if the Consolidation Officer has passed an order

u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), then the appeal would lie before the Settlement Officer Consolidation in view of Section 11 of the Uttar Pradesh Consolidation Holdings Act, 1953. Paragraph no.9 of **Sufia's case (supra)** is being quoted as under:

"9. In view of the above analysis, this court is of the opinion that application u/s 340 Cr.P.C. (corresponding Section 379 BNSS) is maintainable and Consolidation Officer or other consolidation authorities would be, well within their jurisdiction to conduct preliminary enquiry regarding the offence u/s 195(1)(b) Cr.P.C. relating to giving or producing false document or evidence before it and after enquiry if the consolidation authorities are of the opinion that prima facie offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C. is made out then it will record its finding to that effect and make such complaint in writing and send it to the Magistrate of first class having jurisdiction thereof."

10. The Apex Court in the case of **State of A.P. Vs. V. Sarma Rao & Others reported in (2007) 2 SCC 159** observed that an appeal against the order passed in Section 340 Cr.P.C. (corresponding to Section 379 BNSS) would lie to the appellate forum created by the Special Act under which proceeding, application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) has been filed and further observed that the Land Acquisition Act is Special Act which provides for the forums, both original and appellate. Paragraph nos.16 and 17 of V. Sarma Rao (supra) are being quoted as under:

"16. In our opinion, it would not be. The Court of the Subordinate Judge may be subordinate to District Judge for administrative purpose. He may be a court subordinate to it under the Code of Civil Procedure. But in relation to a proceeding under the Land Acquisition Act, it would not be. We have noticed that in terms of Section 53 of the Land Acquisition Act, the procedures laid down under the Civil Procedure Code would apply but the same is subject to the exceptions specified therein viz. save insofar as they may be inconsistent with anything contained therein. The Land Acquisition Act is a special statute. It provides for the forums, both original and appellate. Section 2(4) of the Code of Civil Procedure, 1908 defines "district" to mean the local limits of the jurisdiction of a Principal Civil Court of original jurisdiction, also known as District Court. It also includes local limits of the ordinary original civil jurisdiction of a High Court. Section 3 thereof provides hierarchy of the courts in the following terms:

"3. Subordination of courts.?For the purposes of this Code, the District Court is subordinate to the High Court, and every civil court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

17. What is of significance is that the subordination of courts as specified therein is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder. Section 96 of the Code provides that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court. The court entitled to hear the appeals from a decree passed by a trial court, therefore,

must be authorised therefor. It is one thing to say that an appeal, depending upon the valuation, would lie before different forums, but if under the provisions of a special statute an appeal shall lie only before the High Court and to no other, the District Court would not be a court where an appeal would ordinarily lie from a judgment of the Land Acquisition Judge. The Land Acquisition Act being self-contained code; in relation to the matters falling within the purview of the Land Acquisition Act, the civil courts would have no jurisdiction."

11. Similarly, Section 19 of the Act, 1984 also provides that the appeal against the order passed by the Family Court would lie before the High Court and the same shall be heard by a Division Bench or a Bench having the strength of more than two Judges. Therefore, Section 19 of the Act, 1984 provides not only the right and procedure but also the forum for filing an appeal against the order of the Family Court. Section 341 Cr.P.C. (corresponding to Section 380 BNSS) only provides the right to file an appeal against the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) by any court. Therefore, there is no conflict between Section 341 Cr.P.C. (corresponding to Section 380 BNSS) and Section 19 of the Act, 1984, except the fact that Section 19 of the Act, 1984, also provides the forum for filing an appeal against the orders passed by the Family Court, including the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS). Section 19 of the Act, 1984, contains a non-obstante clause; therefore, it will prevail over Section 341 Cr.P.C. (corresponding to Section 380 BNSS) so far as the forum and limitation are concerned. Apart from this, the Act, 1984 is a Special Act and Cr.P.C. is a General Act, therefore, the provision of the Act, 1984 will prevail over the provision of Cr.P.C.

12. However, Section 19 of the Act, 1984 provides that no appeal lies against the interlocutory order. Therefore, the question arises whether the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is an interlocutory or a final order. This issue is no longer res integra, as the Apex Court has decided this issue in the case of **Shah Babulal Khimji vs. Jayaben,** reported in **AIR 1981 SC 1786** and held that an order which decides the issue finally will not be interlocutory but a final order. In Section 340 Cr.P.C. (corresponding to Section 379 BNSS), the Court finally decided the issue of whether a prima facie case is made out for filing a complaint for perjury or not. Therefore, the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is not the interlocutory but a final order.

13. A coordinate Bench of this Court has also considered this issue in **Jitendra Kumar Lakhmani Vs. State of U.P. & Another** in **Criminal Appeal No.3030 of 2024** vide order dated **25.09.2024** regarding maintainability of appeal against the order passed by the Family Court u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) and observed that if the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) has been passed by the Family Court then appeal would lie u/s 19 of the Act, 1984 not u/s 341 Cr.P.C. (corresponding to Section 380 BNSS). Paragraph no.13 of the above judgment is being quoted as under :

"13. Considering the aforesaid, it is thus apparent that in case the appellant

herein is aggrieved by an order by which his application under Section 340 of the Code has been rejected consequently the only remedy available to him is to challenge the said order by filing of an appeal under Section 19(1) of the Act, 1984 and the appeal fled under the provisions of the Code or BNSS would not be maintainable keeping in view the non-obstante clause as per sub-section (1) of Section 19 of the Act, 1984 and the Act, 1994 being a Special Act."

14. As per Section 10 of the Act, 1984, proceedings before the Family Court shall be as per the Civil Procedure Code except for the order passed under Chapter IX of the Cr.P.C. (Section 125 to 128) and as per Section 18 of the Act, 1984, the decree or order of Family Court shall be executed as decree or order of civil Court. Sections 10 and 18 of the Act, 1984 are being quoted as under:

***"10. Procedure generally**.-(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court*

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

***18. Execution of decrees and orders**.-(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

15. Therefore, in view of Sections 10 and 18 of the Act, 1984, procedure before the High Court in a Family Court Appeal would be as per the Civil Procedure Code

16. The Apex Court in the case of **M.S. Sheriff Vs. State of Madras** reported in **(1954) 1 SCC 524** observed that while considering the application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), the Court is required to consider whether "it is

expedient in the interest of justice" that an enquiry should be made and a complaint is to be filed.

17. Therefore, from the above discussion, it is clear that proceeding u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is neither criminal nor civil but can be termed as quasi-criminal.

18. **It is clear from the above analysis that an appeal arising from an order issued under Section 340 Cr.P.C. (corresponding to Section 379 BNSS) by the Family Court should be filed in accordance with Section 19 of the Act of 1984, specifically before the Division Bench of the High Court. Section 19 clearly does not preclude the appeal procedures outlined in Section 341 Cr.P.C. (corresponding to Section 380 BNSS) instead, it establishes a definitive forum and procedural framework for such appeals, directing them to the Division Bench of the High Court**.

19. **Furthermore, it is critical to recognize that an appeal against an order issued under Section 340 Cr.P.C. by the Family Court is not appropriate in a criminal court setting. Instead, it must be duly submitted under Section 19 of the Act of 1984 to the Division Bench of the High Court, following the procedural guidelines and limitations prescribed therein. This clarification serves to eliminate any ambiguity regarding the proper channel for pursuing such appeals.**

20. In view of the above, the present appeal is not maintainable before this Court.

21. Accordingly, the present appeal is **rejected** with liberty to the appellant to file an appeal u/s 19 of the Act, 1984, before the appropriate Bench.

(2025) 9 ILRA 909
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 11944 of 2024

Chandrakesh Bhardwaj ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
R.P.S. Chauhan

Counsel for the Opposite Parties:
Deepak Upadhyay, G.A., Sarvesh Kumar Mishra

Issue for Consideration

The appellant has been summoned to face the trial u/s 204 Cr.PC-The appellant contended that the subsequent prosecution was barred because a prior case had already been registered against him and the co-accused on identical facts.

Headnotes

A. Criminal matter-Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Ac),1989-Section 14-A(1), 3(2)5-Indian Penal Code,1860-Sections 406, 420, 467, 468, 471, 120-B, 506-Civil dispute Vs.Criminality-The allegations primarily concerning the non-return of earnest money, related to civil dispute for which a civil remedy exists, and giving it the "colour of criminality" amounts to abuse-The court concluded that the criminal proceedings were manifestly attended with mala fide and were not sustainable-Appeal allowed.

Held

The court found that the complaint was lodged with the intent and purpose of putting pressure

on the appellant to return the earnest money- The court recognized that for an offence to fall under the SC/ST Act, it is not sufficient that the offence was committed against the member of the SC community, it must be proven that the offense was committed only because the victim was a member of the SC/ST community- Applying the principles laid down by the Hon'ble Apex court in Mohd. Wajid and Pradeep Kumar Kesarwani, the Court, determined that a careful examination of the allegations and attending circumstances demonstrated the frivolous nature of the proceedings. (Para 9 to 23) (E-6)

Case law Cited

T.T.Antony Vs State of Kerala & Ors (2001) 6 SCC 181, Inder Mohan Goswami & State of Uttaranchal & Ors (2007) 12 SCC 1, Hon'ble Apex Court in Indian Oil Corpn, Vs NEPC India LTD. & Ors (2006) 6 SCC 736, Mohd. Wajid & Anr Vs State of U.P. & Ors. (2023) 20 SCC 219, Pradeep Kumar Kesarwani Vs State of U.P. & Anr. 2025 (4) RCR (Criminal) 119, S.N.Vijayalakshmi Vs State of Karnataka, 2025 INSC (2025 LiveLaw (SC) 758), Paramjeet Batra Vs State of Uttarakhan, (2013) 11 SCC 673,C. Subbiah @ Kadambur Jayaraj & Ors Vs The Superintendent of Police & Ors, 2024 INSC 416- referred to.

List of Acts

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), 1989, Indian Penal Code, 1860.

List of Keywords

Color of criminality, SC/ST Act, weight of evidence, commission of offence, credible evidence, forgery, complainant, co-accused, abuse of process, argument, allegation, summoned, face trial, 'Chamari Chamatti', refund of money, earnest money.

Case Arising from

CRIMINAL APPELLATE JURISDICTION- CRIMINAL APPEAL No. – 11944 of 2024

From the Judgment and Order dated 26.09.2025 of the High Court of Judicature at Allahabad.

Chandrakesh Bhardwaj Vs. State of U.P.& Anr

Appearances for Parties

Counsel for Appellant(s)

R.P.S. Chauhan

Counsel for Respondent(s)

Deepak Upadhyay,G.A.,Sarvesh Kumar Mishra

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Mr. R.P.S. Chauhan, learned counsel for the appellant, Mr. Deepak Upadhyaya, learned counsel for the opposite party no. 2 and Mr. Rahul Asthana, learned AGA appearing for the State respondents.

2. The appellant has preferred this appeal under Section 14A(1) of S.C./S.T. (Prevention of Atrocities) Act, 1989 challenging the order dated 23.7.2024 passed by the learned Special Judge (SC/ST Act), Meerut in Complaint No. 26 of 2023 (Smt. Amarwati vs. Chandrakesh Bhardwaj and another), under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC and Section 3(2)5 SC/ST Act, Police Station Kankarkheda, District Meerut.

3. The appellant herein Chandrakesh Bhardwaj has been summoned to face trial under Section 204 of Criminal Procedure Code (hereinafter referred to as the ?CrPC?) for the offences under the aforesaid sections. The appellant has preferred this appeal on the grounds that the order impugned passed by the learned trial Court is arbitrary and against the provisions of law and the same is against the weight of evidence. The appellant has also taken the ground that there was no motive on the part of him to commit the alleged offence and there is no credible evidence against him for commission of the said offence. Further, the grounds have been taken that there are major discrepancies in the prosecution story and no caste insulting words were

allegedly used by the appellant to the informant and the injured and there is a delay of six months and 27 days in lodging the complaint.

4. The facts in brief is that the an application under Section 156(3) was filed by the opposite party no. 2-Smt. Amarwati against the appellant and co-accused Bijendra, which was treated as a complaint case by the learned Special Judge (SC/ST Act), Meerut bearing Complaint No. 26 of 2023 (Smt. Amarwati vs. Chandrakesh Bhardwaj and another) alleging therein that the complainant i.e. opposite party no. 2 herein is a housewife and does labour work to support her and her family members. One Chandrakesh Bhardwaj (appellant herein) is a clever person who induced her husband Omveer to execute the sale deed of his plot, which was situated at Medical, Garh Road, Meerut through brokers and in its place some other plot was shown to her at Mansha Devi Road, Aurangshahpur Diggi, Garh Road, Meerut. It is further alleged that the appellant introduced the complainant to co-accused Bijendra and by making false promise persuaded her to purchase a plot from co-accused Bijendra. The appellant and the co-accused Bijendra shared the amount received from the complainant and out of Rs. 5,00,000/-, Rs. 1,50,000/- was taken by the appellant and the remaining Rs. 3,50,000/- was taken by co-accused Bijendra. It is also alleged that on 30.1.2021 the appellant and the co-accused Bijendra by committing forgery executed a forged document showing the same to be a sale deed and deceived her by taking consideration money. When the complainant came to know that no sale deed has been executed, she asked the appellant and the co-accused to return the money received by them to her but they indulged in dilly-dallying and they took her to the forest where they committed rape on her after giving threats and they also used abusive language and caste name like ?Chamari Chamatti?. It is further alleged that the complainant approached the police for registration of the first information report but the same was not registered and thereafter she filed instant complaint.

5. The learned Special Judge recorded the statement of the victim i.e. opposite party no. 2 under Section 200 CrPC and other witnesses i.e. Brahmpal and Syad Mohammad under Section 202 CrPC wherein they have supported the allegation and after hearing the argument of the complainant passed the order impugned and summoned the appellant and co-accused Bijendra to face trial under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC and Section 3(2)5 SC/ST Act.

6. It is contended by the learned counsel for the appellant that the present prosecution is an abuse of process of the Court. It is further submitted that the complainant has earlier filed an application under Section 156(3) CrPC bearing No. 875 of 2022 against the appellant and the co-accused Bijendra for the allegation under Sections 376, 420, 467, 468, 471, 120B, 504, 506 IPC and Section 3(1)(10) SC/ST Act alleging the same facts as contained in the instant complaint, in which, by order of the learned Magistrate, a first information report under Sections 323, 504, 506 and Section 3(2)(va) SC/ST Act was registered. Learned counsel for the appellant submits that two FIRs cannot be lodged for the same offence and subsequent prosecution is barred in view of the law laid down by Hon?ble Apex Court in **T.T. Antony vs. State of Kerala and others**, (2001) 6 SCC 181. It is further submitted that from bare reading of the allegation in

the application under Section 156(3) CrPC, the matter relates to some civil dispute and it has been given the colour of criminality. It is further submitted that the delay of six months and 27 days in filing the complaint is itself a circumstance, which raises doubt on the veracity of the allegation. It is also submitted that the learned Special Judge has not found the allegation of rape to be true and has not summoned the appellant to face trial under Section 376 IPC. It is also submitted that the learned Special Judge erred in exercising the jurisdiction and no offence under SC/ST Act is made out as nowhere it is alleged in the complaint that the appellant committed the offence simply on the ground that the opposite party no. 2 was a member of SC/ST community. Learned counsel for the appellant has referred to the various provisions of SC/ST Act and submitted that simply the offence committed against a member of SC community does not amount to an offence under SC/ST Act but for brining the offence under the purview of SC/ST Act it is the intention to commit the offence only because the victim is a member of SC/ST community. Learned counsel for the appellant has placed reliance on a judgement of Hon'ble Apex Court rendered in the case **of Inder Mohan Goswami and another vs. State of Uttaranchal and others,** (2007) 12 SCC 1. In view of the above, learned counsel for the appellant submits that learned Special Judge has failed to appreciate the facts in right perspective and has erred in summoning the appellant to face trial.

7. On the other hand, Sri Deepak Upadhyay, learned counsel for the opposite party no. 2 submits that from the averments of the complaint a cognizable offence is disclosed and the learned Special Judge has rightly passed the order impugned herein. It is submitted that the complaint discloses an offence of criminal breach of trust and commission of forgery by the appellant and co-accused and also offences under the SC/ST Act are also disclosed. It is further submitted that the date of commission of offence in the first prosecution is not the same as the date of commission of the offence in the instant case, therefore, present prosecution cannot be a bar in view of the earlier case filed by the opposite party no. 2 against the appellant. It is also submitted that from bare reading of the complaint if there is element of criminality, the criminal law can be set in motion even if the facts disclose civil dispute. In support of his arguments, he has placed reliance on a judgement of Hon?ble Apex Court rendered in **Hon'ble Apex Court in Indian Oil Corpn. vs. NEPC India LTD. And others**, (2006) 6 SCC 736.

8. I have considered the rival submissions advanced by the learned counsel for the parties.

9. The opposite party no. 2 (complainant) earlier filed an application under Section 156(3) CrPC bearing Application No. 875 of 2022 stating therein that the applicant induced her to sell her plot at Medical, Garh Road, Meerut and in its place he had shown another plot of Mansha Devi Road, Aurangshahpur Diggi, Garh Road, Meerut. She has further stated that by giving false promise he induced her to enter into agreement with the owner of the second plot Bijendra. It is further submitted that the appellant Chandrakesh Bhardwaj herein and co-accused Bijendra got the consideration money, which was received by the complainant from the sale of first plot and the appellant retained Rs. 1,50,000/- with him and remaining Rs. 3,50,000/- was given to co-accused

Bijendra. It is further submitted by her that when no sale deed was executed by the co-accused Bijendra, then the complainant asked for return of the amount, which was not given to her by the appellant and co-accused. When she repeated her request for refund of the money, the appellant and the co-accused Bijendra used caste language and insulted her. On the basis of the above application under Section 156(3) CrPC, a case was registered on 12.7.2023 under Sections 320, 504, 506 IPC and Section 3(2)(va) SC/ST Act. After investigation, a chargesheet was submitted and cognizance of the said offence was taken by the Special Judge vide order dated 14.9.2023.

10. Present prosecution has been lodged by filing a complaint dated 6.2.2023 by the opposite party no. 2 (complainant) stating therein the identical facts with addition that she has stated that on 10.7.2022 the appellant and co-accused took the victim to the forest of Kankarkheda on the pretext of refunding her money and committed repeated rape on her and threatened her that if she disclosed any one about the incident, her son and she would be killed. The complainant has further stated that she made request for refund of money, but the same was not returned to her and she was abused by using caste name and was threatened by the appellant and co-accused Bijendra. The said application under Section 156(3) CrPC was dismissed vide order dated 14.3.2023 by the learned Special Judge, against which the opposite party no. 2 approached this Court and this Court vide order dated 21.8.2023 passed in Criminal Appeal No. 3552 of 2023 (Amarvati vs. State of UP and 2 others) remanded the matter back to the Special Judge to consider her application under Section 156(3) CrPC afresh.

11. On remand by this Court, learned Special Judge treated the application under Section 156(3) CrPC as a complaint case and after examining the complainant under Section 200 CrPC and the witnesses Brahmpal and Syad Mohammad under Section 202 CrPC, impugned order has been passed on 23.7.2024 whereby learned Special Judge has summoned the appellant Chandrakesh Bhardwaj and co-accused Bijendra to face the trial under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC and Section 3(2)5 SC/ST Act.

12. Present appeal has been filed under Section 14(A) of the SC/ST Act, which reads as under:

Section 14(A)

*"**14A. Appeals**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.*

(2) Notwithstanding, anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgement, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

13. From perusal of the above provisions, it is clear that any order passed under the SC/ST Act can be challenged before the High Court by filing an appeal both on facts and on law. The Hon'ble Apex Court in the case of **Mohd. Wajid and another vs. State of Uttar Pradesh and others**, (2023) 20 SCC 219 has held as under:

"33. In the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 IPC may probably could be said to have been disclosed but not under Section 504 IPC. The allegations with respect to the offence punishable under Section 504 IPC can also be looked at from a different perspective. In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR.

34. One of the essential elements, as discussed above, constituting an offence under Section 504 IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present.

35. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . The parameters are : (SCC pp. 378-79, para 102)

"102. ? (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence

but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.?

In our opinion, the present case falls within Parameters Nos. 1, 5 and 7, respectively, referred to above.

36. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

37. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

38. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

39. In State of A.P. v. Golconda Linga Swamy [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held : (SCC pp. 526-27, paras 5-7)

"5. ? Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] , this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (SCC OnLine SC para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit

a prosecution and bring about its sudden death."

14. On perusal of the principles laid down in the above judgement, it is amply clear that when an application is filed under Section 482 CrPC for quashing the criminal proceedings, the Court must look consciously and carefully to the allegations made in the first information report as well as the attending circumstances.

15. Similar view has been reiterated by the Hon'ble Apex Court in the latest judgement rendered in the case of **Pradeep Kumar Kesarwani vs. State of Uttar Pradesh and Another**, 2025(4) RCR (Criminal) 119, paragraphs 16 to 20 and 23 whereof are quoted as under:

"16. It is by now well settled that summoning any person on the basis of a frivolous or vexatious complaint is something very serious. This would tarnish the image of the person against whom false, frivolous and vexatious allegations are levelled.

17. The duty of the court in cases where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance was delineated by this Court in Mohammad Wajid v. State of U.P., reported as 2023 SCC OnLine SC 951. We may refer to the following observations:

"34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes

importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.? (Emphasis supplied)

18. There is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls in the ambit of cheating or deception.

19. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Deepak Gulati Vs. State of Haryana reported in 2013 Criminal Law Journal 2990. This Court made the following observations:

"18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within a ambit of cheating or deception. There is a distinction between the mere breach of a promise,and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accuse; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, of which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was male fide, and that he had clandestine motives.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The ?failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact, the fact must have an immediate relevance.? Section 90, IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.? (Emphasis supplied)

20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i)Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality"

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal ? proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar & Ors. v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]

21...

22.....

23. In such circumstances, the High Court should have exercised its inherent powers under Section 482 of the Code for quashing of the criminal proceedings."

16. From perusal of the averments made in Misc. Application no. 875 of 2022 the application filed under Section 156(3) CrPC and present prosecution, the averments are almost identical except that in the present prosecution, additional allegation of rape has been levelled against the appellant, however, the learned Special Judge has not found the said allegation true and has not summoned the appellant to face trial for the offence of rape.

17. In view of the principles laid down by Hon'ble Apex Court in Mohd Wazid (supra) and Pradeep Kumar Kesarwani (supra), the Court is enjoined to look into the allegations carefully and also look into the attending circumstances.

18. On the above premise, crux of the allegation against the appellant is that the appellant and co-accused have not returned the earnest money received by them and the opposite party no. 2 (complainant) has filed earlier prosecution as well as the present prosecution to realize and recover the said amount from the appellant and the co-accused. Though the principles laid down by the Hon'ble Apex Court in the above two judgements relates to Section 482 CrPC but so far as the offences under the SC/ST Act are concerned, the only provision which provides to challenge any order is by way of filing an appeal under Section 14(A) of

SC/ST Act, therefore, the principles enunciated in the above judgements will apply to the proceedings under Section 14(A) of SC/ST Act.

19. Further, it is also pertinent to mention that present prosecution has been lodged after a delay of more than six months and as per prosecution version, the victim (opposite party no. 2) continued to make repeated request to the appellant and the co-accused Bijendra to return the earnest money even after the incident of rape and abuse by using the caste name was committed with her on 10.7.2022.

20. In view of the above, present prosecution is nothing but an abuse of process of the Court as it has been lodged with the intent and purpose of putting pressure on the appellant to return the earnest money received by him. The refund of earnest money is a civil dispute for which civil remedy lies.

21. The Hon?ble Supreme Court in the latest judgement of **S.N. Vijayalakshmi vs. State of Karnataka,** 2025 INSC 917 (2025 LiveLaw (SC) 758) has held that where the allegation purely reflects civil dispute, no criminal prosecution can be initiated on its basis. Similar view has been expressed by Hon?ble Supreme Court in **Paramjeet Batra vs. State of Uttarakhand**, (2013) 11 SCC 673 and in **C. Subbiah @ Kadambur Jayaraj and Ors. Vs. The Superintendent of Police and Ors.,** 2024 INSC 416. Already the appellant and the co-accused are facing a criminal case on identical facts filed by the opposite party no. 2. It is also wroth to note that the present prosecution has been lodged after a delay of more than six months, which raises question on the intent and purpose of filing the present prosecution

22. In view of the principles laid down by Hon'ble Supreme Court in *Mohd Wazid (supra) and Pradeep Kumar Kesarwani* (supra) by carefully going through the allegation in the instant complaint and the attending facts and circumstances of the case, entire proceedings are liable to quashed against the appellant herein and the appeal is liable to be allowed.

23. Accordingly, present appeal stands **allowed**. The impugned order dated 23.7.2024 passed by the learned Special Judge (SC/ST Act), Meerut in Complaint No. 26 of 2023 (Smt. Amarwati vs. Chandrakesh Bhardwaj and another), under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC and Section 3(2)5 SC/ST Act, Police Station Kankarkheda, District Meerut are hereby set aside against the appellant herein.

(2025) 9 ILRA 920
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 21 of 2023

Smt. Shikha Agarwal ...Appellant
Versus
Sanjeev Garg (Deceased) & Ors. ...Respondents

Counsel for the Appellant:
Anshul Kumar Singhal, Vinod Kumar Agarwal

Counsel for the Respondents:

Chandan Sharma, Shubham Tripathi

Issue for Consideration

Matter pertains to whether the trial court had erred in law in rejecting plaintiff's suit under O. VII R. 11(d) of Code of Civil Procedure on ground that it was barred u/s 206 of U.P. Revenue Code, 2006, without examining distinct character and usage of properties in question, which were alleged to be residential, commercial, industrial, and non-agricultural in nature, and therefore within the jurisdiction of civil court.

Headnotes

Code of Civil Procedure, 1908 - O. 7 R. 11(d), 96, 151 - U.P. Revenue Code, 2006 - ss. 33(B), 108, 109, 206 - Specific Relief Act, 1963 - s. 41(h) - UPZA & LR Act of 1950 - ss. 143, 144 - Plaintiff–appellant, instituted Original Suit before Civil Judge (Senior Division), Mathura, seeking a declaratory decree to declare certain sale deeds executed by her father, late Sanjeev Garg, in favour of defendants as null and void, along with permanent injunction restraining them from interfering with her possession over properties in dispute - It was pleaded that suit properties, situated within municipal limits and used for residential, commercial, and industrial purposes, were not agricultural lands and thus jurisdiction of civil court was rightly invoked - Defendants, moved application under O. VII R. 11(d) C.P.C., contending that suit was barred by Section 206 of U.P. Revenue Code, 2006, as subject matter allegedly pertained to agricultural land falling within jurisdiction of revenue court - Trial court accepted objection and dismissed suit as barred by law - Aggrieved thereby, plaintiff preferred instant First Appeal u/s 96 C.P.C. before High Court, contending that trial court erred in treating all properties as agricultural despite clear averments and documentary evidence indicating their non-agricultural, urban and commercial character.

Held: From the pleadings of plaintiff in plaint, it is very much apparent that she is claiming ownership of 1/2 share in various residential and commercial properties of her late father who died on 12.5.2009, such as, ancestral residential three storeyed building and godown situated in Nayaganj, Ghaziabad, marriage home and banquet hall namely Imperial Garden and Heritage-Inn situated on Hapur road Ghaziabad, in immovable property of Messers Aarti Steels Ltd and several other immovable property - Since, the properties are prima-facie residential, commercial and industrial property as such, on ground that some of disputed property is agricultural, the whole plaint cannot be rejected under O. 7 R. 11 CPC - In respect of said property, plaintiff is entitled to claim relief of declaration and permanent injunction from civil court, regarding which revenue court has got no jurisdiction - Even defendants in their application under O. 7 R. 11 CPC, mentioned that plaintiff never remained in possession of agricultural and non-agricultural properties mentioned in paragraph 4 of plaint - It is apparent that even defendants accepted that some disputed property mentioned in plaint was non-agricultural. sir short the sentence in a legalistic tone - In view of facts and circumstances, trial court erred in law by rejecting entire plaint on the premise that all disputed properties were agricultural and relief was barred u/s 206 of U.P. Revenue Code - Since multiple properties are involved, matter ought to have been decided on merits after framing issues and recording evidence - Summary rejection of plaint amounts to grave illegality, rendering impugned order perverse and unsustainable in law - Accordingly, appeal has merits and is liable to be allowed. [Paras 28, 29, 30] (E-13)

Case Law Cited

Sejal Glass Ltd. v. Navilan Merchants Private Limited, **(2018) 11 SCC 780;** Sri Boyenepally Srijayavardhan v. V. Nirupama Reddy and others, **Civil Appeal No.9904 of 2025** - **relied on**

List of Acts

Code of Civil Procedure, 1908; U.P. Revenue Code, 2006; Specific Relief Act, 1963; UPZA & LR Act of 1950

List of Keywords

First Appeal under Section 96 C.P.C.; Order 7 Rule 11(d) C.P.C.; Suit barred by law; Section 206 of U.P. Revenue Code, 2006; Declaratory relief; Permanent injunction; Null and void sale deeds; Jurisdiction of civil court; Bar of jurisdiction; Agricultural land; Residential and commercial property; Industrial property; Municipal limits; Urban area; Revenue records; Nature and character of land; Non-agricultural use; Determination of jurisdiction; Summary rejection of plaint; Material illegality; Jurisdictional error; Erroneous exercise of jurisdiction; Unsustainable in the eyes of law; Set aside; Trial court directed to proceed in accordance with law.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 21 of 2023

From the judgment and decree dated 3.12.2022 passed by the court of Civil Judge (Senior Division) / FTC, Ghaziabad in O.S. No. 782 of 2021

Appearances for Parties

Advs. for the Appellant:

Anshul Kumar Singhal, Vinod Kumar Agrawal

Advs. for the Respondent:

Chandan Sharma, Shubham Tripathi

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

1. The instant appeal under Section 96 CPC has been preferred by the plaintiff against judgment and decree dated 3.12.2022 passed by the court of Civil Judge(Senior Division) / FTC, Ghaziabad in O.S. no. 782 of 2021 Smt. Shikha Agrawal Vs. Sanjeev Garg (Deceased) through LR's whereby, the plaintiffs suit has been rejected under Order 7 Rule 11(d) CPC on the ground that plaintiff has sought the relief of declaration and permanent injunction regarding immovable property which is an agricultural land, which can only be granted by revenue Court.

2. Factual matrix is that the plaintiff Smt.Shikha Agrawal filed O.S. no. 782 of 2021 against his real brother Sanjeev Garg(died during pendency of suit) with the averments that their father Satyaprakash Garg died on 12.5.2009 leaving behind his wife Smt. Premlata Garg, daughter Shikha Agrawal(plaintiff) and son Sanjeev Garg(defendant) as his legal heirs. It was further averred that the defendant died during pendency of suit on 8.3.2022 leaving behind his wife Smt.Vandana Garg and sons Shaurya Garg,Dhairya Garg. Smt.Premlata Garg also died on 22.3.2020. She further averred that on the death of her parents, she and the legal heirs of deceased defendant became the joint owners of all movable and immovable property left behind by her parents, in which she is having 1/2 share.

3. The plaintiff further averred that at the time of the death of her parents, they were having the following immovable properties:-

(i)An ancestral residential three storyed building and godown etc. having no. 24 and 25 (new no. 27 & 28) situated in Naya Ganj, Ghaziabad in which her father was having one third share and after his death, she and the defendant each became owners in possession of one sixth share.

(ii)Marriage home and banquet hall namely Imperial Garden and Heritage-Inn, which were constructed about 25 □ 30 years back, situated on Hapur road, Ghaziabad, which were used as a single unit, which were having 10 foot high boundary, having two permanent gates, each having 5000 ft□ covered area having permanent roof, air-conditioned banquet halls, having common toilets, five large guest rooms with attached toilets, office blocks, pantry in an area of about 3000 ft□ covered area, etc. were situated. The

marriage hall was constructed by his late father with Mahesh Chand Garg and Bharat Bhushan Garg which was completely residential, commercial and non-agricultural property situated in khasra No. 448 m, 526, 527, 544 and 543 m having area of 10,090 m situated in village Dasna Ghaziabad. She further averred that the above property was situated within Ghaziabad city, on the Ghaziabad Hapur road, which was residential and commercial property of her father, towards east of which was a developed multi-storeyed residential colony namely Ansal Garden Enclave developed by Ansal builders, towards west was Hapur road, thereafter densely populated Govind Puram residential scheme of Ghaziabad Development Authority which was established 30 35 years back, towards north was Ganga Puram residential colony and towards South was Ansal Garden Enclave and Flora Garden Enclave residential colonies. She further averred that in the above properties, her father was having one third share and after his death, she and the defendant each are co-owners of one sixth share.

(iii)Immovable property situated in Hindon civil airport, Ghaziabad which was situated within the city, which was residential and commercial, having khasra number 116 m, 125 m, 130/3, 131 m, 132 m, 133 m and 142, total area 18,850 m situated in village Sikandarpur, Pargana Loni, tehsil and District Ghaziabad in which her father was having two thirds share, and after his death, she and the defendant each was having one third share. The above residential land was situated within Ghaziabad city, in between densely populated Rajendra Nagar and Hindon Air Force Station etc. which was never used in the lifetime of her father and thereafter, for agricultural purposes. Her father in the year 2000 established B.K.Usha Education Society on the above land and started establishing a college. Subsequently, a lease deed dated 10.8.2018 was executed in favour of Excellency the Governor U.P., for establishing civil airport.

(iv)An immovable property situated in the industrial, residential area developed by UP State Industrial Development Corporation Ltd and Greater Noida Industrial Development Authority in village Surajpur, Greater Noida, Gautam Buddha Nagar about 35 years back in the year 1985 in which Messers Aarti Steel Rolling Mills Ltd(incorporated in 1986) which was merged in the year 2004 in Messers Aarti Steels Ltd, which was situated in khasra No. 236 and 237 having area of 4660 m and khasra No. 234 area 5533 m, the half portion of which amounting to 2766 square metre belonged to her father. In the above land of Messers Aarti Steels, in the industrial area industrial sheds, machines, equipments, more than 30 rooms, three large halls, toilets, etc were constructed in the lifetime of her father, which was never used in the lifetime of her father and after his death, for agricultural purposes. In this property also after the death of her father, she and the defendant, each was having one half share. She further averred towards east of the above property, there was a reserved bird sanctuary, towards west was Shriram Enclave residential colony, towards north was Arya Samaj Temple and densely populated area, towards South was Dadri Surajpur Noida main road thereafter, Lotus Park multi-storeyed residential project, UPSIDC industrial area and Dharampal market etc. are situated.

(v)Land of khasra no. 1857, 1876 Ka, 1876kha, and 1879 m, total area 7,836

square metre situated in village Sadarpur, Ghaziabad which is situated between fully developed Govind Puram, established by Ghaziabad Development Authority and other private property, which was fully residential and was situated within Ghaziabad city, towards west was E-Block Govindpuram, towards east was Kailashpuram residential colony, towards north was Kailashpuram residential colony and towards South was service road and thereafter, C-Block Govindpuram was situated, in which her father was having one third share and after his death, she and the defendant each is having one sixth share.

4. She further averred that all the above-mentioned movable and immovable properties of her late father were residential, commercial, industrial and non-agricultural and after the death of her father and mother, she and the defendant ,are the legal heirs, each is owner in possession of one half share of the above mentioned properties.

5. She further averred that the defendant was trying to misappropriate the above mentioned properties illegally and intended to usurp the plaintiffs right and share in the above mentioned properties and was threatening to alienate, sell, lease, mortgage, and create charge in the above properties in favour of third parties, so as to cause irreparable injury to the plaintiff.

6. She further averred that the defendant was illegally selling the above immovable properties. The defendant in collusion with other co-owners in khasra no. 1857, 1876 kha, 1879, 1880,1883 and 1876 ka, having total area of 1.4420 hectare(ha), has already sold 3414 m land in khasra no. 1879, 2280 m□ in khasra no. 1880, 890 m□ in khasra number 1883 i.e 0.6584 hectare through illegal sale deeds. She further averred that in the above land having area of 1.4420 ha, her father was having one third share of 0.4806 ha and after the death of her father, she and the defendant, each is owner of half share of 0.2403 ha. She further averred that the defendant has already sold 0.2194 ha of his one third share and only 0.0209 ha share of defendant in the above land is remaining whereas, her whole share 0.2403 ha, is still intact.

7. She further averred that the defendant has also filed a case under section 372 of the Indian Succession Act for obtaining the succession certificate of her late father regarding the bank fixed deposit and savings account deposits left behind by her late father on the false ground of being the sole heir of her late father by filing Miscellaneous Case number 186 of 2020, Sanjeev Garg versus Shaurya Garg and others, in the court of Civil Judge Senior Division, Ghaziabad by fradulently impleading his sons as defendants. The defendant has deliberately with the malfide intention, not impleaded her as a party in that case. Besides that, the defendant also filed a false affidavit in that case, in which he stated that he was the only legal heir of his late father.

8. She further averred that during the lifetime of her late father, his several properties were acquired by the State of Uttar Pradesh, regarding which several Courts have awarded enhanced compensation for the land acquired, for obtaining which, the defendant has filed several execution cases in the court of Additional District Judge, Ghaziabad in which also, the defendant has fradulently stated that he is the only sole legal heir of his late father.

9. She further stated that in the property mentioned previously, the defendant has fradulently executed lease deed in favour of his Excellency the Governor of U.P. for three years w.e.f. 10.8.2018 till 9.8.2021, for consideration of ₹ 15,74,000, @ ₹ 200 per square metre, in which she and the defendant are the legal heirs of one half share after the demise of her father, in which she is having share of ₹ 7,87,000.

10. She also disclosed that previously she instituted O.S. no. 492 of 2021 Shikha Agrawal versus Sanjeev Garg in the court of Civil Judge, Senior Division, Ghaziabad, which was withdrawn with the permission of the court on 24.8.2021, for filing fresh suit.

11. The plaintiff claimed the following reliefs:-

(A) By decree of declaration granted in her favour against the defendant, it be declared that in the movable and immovable property left behind by her late father Satyaprakash Garg and her mother Smt.Premlata Garg, which have been mentioned in the plaint, she is having one half share being the heir and owner in possession of the disputed property.

(B)By decree of permanent injunction granted in her favour against the defendant, the defendant be restrained from alienating, transferring, leasing, mortgaging, creating charge, realising any rent, constructing, digging, developing and altering the nature of the disputed property in any manner whatsoever, etc. without effecting partition of her share in the disputed property.

12. During the pendency of the suit, the legal heir's of the deceased defendant filed an application 38-C under Order 7 Rule 11 CPC read with Section 151 CPC with the averments that the disputed immovable property mentioned in the plaint was an agricultural property regarding which, in the revenue records, the name of the deceased defendant and his legal heir's have been mutated. According to the U.P. Revenue Code of 2006, the married daughter has got no legal right in the agricultural property. The defendants further averred that the plaintiff had earlier moved an application under Section 33(B) of the U.P. Revenue Code of 2006 with the averments that the mutation in the above property should have been made in accordance with the provisions of Hindu Succession Act and the provisions of Section 108 and 109 of the U.P. Revenue Code are not applicable and the defendant had got no right in the above property but the above application of the plaintiff was rejected by the Tehsildar, Ghaziabad on 14.3.2022 by holding that it was an agricultural land and as such, according to the U.P. Revenue Code of 2006, the plaintiff had no legal right in it.

13. The defendants further averred that the land situated in khasra number 1857, 1876ka,1876kha and 1879m situated in village Sadarpur which was agricultural land, was acquired wayback in the year 1988 by the Ghaziabad Development Authority for establishing Govindpuram scheme and on 14.12.1988 its possession has already been handed to the above Authority but, regarding this land also, the plaintiff was seeking declaration of her rights. The plaintiffs name is not recorded as tenure-holder in the revenue records and as such, the plaintiffs suit was barred by Section 206 of the U.P. Revenue Code.

14. The defendants further averred that since plaintiff was well aware that she

was having share in the disputed property left behind by her father, as such she should have filed the suit for the relief of declaration and injunction within three years after the death of her father, but the suit has been filed after about 12 years, which was barred by limitation.

15. The defendants further averred that the plaintiff has deliberately undervalued the suit because the plaintiff was never in possession of the entire agricultural land and residential land. The plaintiff should have valued the suit on the market value of the disputed property and should have paid the court fees ad-valorem. The Court fees paid by the plaintiff was insufficient and even on this ground, the plaintiff□s suit was barred.

16. The defendants further averred that in the remaining agricultural land after acquisition, situated in khasra number 1879,1880 and 1883, after the death of plaintiff's father, the name of Sanjeev Garg and Smt. Premlata Garg was mutated on 9.3.2010, regarding which sale deeds have already been executed on 22.6.2011, 10.8.2011, 13.12.2011, 4.5.2012, 31.10.2012 and 22.2.2013 and the name of purchasers, has already been mutated in the revenue records, which was in the knowledge of the plaintiff from the date the above sale deeds were executed and as such, after 10 years, the plaintiff has got no legal right to file the present suit, which was barred by limitation.

17. It was averred by the defendants that due to the above reasons, the plaintiff 's suit was barred by Section 206 of the U.P. Revenue Code, because the court was not having jurisdiction to hear the suit, because the suit was barred by limitation, because the suit was undervalued and insufficient Court fees was paid by the plaintiff, the suit was barred by Section 41(h) of the Specific Relief Act as such, the plaintiffs suit be dismissed under Order 7 Rule 11 CPC.

18. The plaintiff filed objections to the defendants above application under Order 7 Rule 11 CPC whereby she stated that the defendants want to delay the disposal of the suit by creating unnecessary complications. The plaintiff has already suffered serious injury because her interim injunction application was pending for the last one year. The High Court had directed that the suit be decided expeditiously but the defendants are violating the above order of this Court. The defendant's right to file written statement has already been closed because it was not filed within the stipulated time mentioned in Order 8 Rule 1 CPC. It was further submitted that the grounds raised by the defendants in the application can only be examined after framing of issues and adducing evidence which cannot be a ground for rejection of plaint under Order 7 Rule 11 CPC. She specifically submitted that the disputed property was not an agricultural property, which was not governed by the U.P. Revenue Code regarding which the civil court has got jurisdiction. She further averred that the nature of the disputed property, is to be decided on merits, keeping in view, its usage and condition.

19. She specifically averred that the disputed properties are completely situated within the territorial limits of the city, are non-agricultural properties, which are used for commercial purposes, which are not affected by the revenue entries and the mutation in revenue records therein, because it was illegal. It was further submitted that the revenue records and

revenue entries are not proof of the ownership, nature and usage of the disputed property because indisputably the disputed properties were being used for non-agricultural purposes, since long time. It was submitted that the suit was neither barred by Section 206 of the U.P. Revenue Code nor by limitation. The application was filed by the defendants by abusing the process of law. All the pleas raised by the defendant cannot be examined in an application under Order 7 Rule 11 CPC, as such, the defendants application was liable to be rejected.

20. The trial court by impugned order dated 3.12.2022 concluded that since plaintiff claimed the relief of declaration and injunction regarding immovable property situated in khasra No. 448 m, 526, 527, 544, 543 m,116 m,125 m, 130/3, 131 m, 132 m, 133 m, 142, 236, 237, 234, 1857, 1876ka, 1876kha and 1879 m, which according to the khatauni paper no. 86-C, 63-C, 89-C and 87-C submitted by plaintiff, are agricultural land, in which the plaintiff was not recorded tenure holder, there was no declaration under Section 143 and 144 of the UPZA & LR Act of 1950, which was mandatory and in the absence of such declaration, the land will be deemed to be agricultural land. The trial court also concluded that as per Section 206 of the U.P. Revenue Code the declaration regarding agricultural land can only be granted by the revenue court as such, the plaintiffs suit was barred by Order 7 Rule 11(d) CPC, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 of the CPC.

21. Learned counsel for the plaintiff - appellant submitted that the impugned order of the trial court is perverse because the disputed property was residential, commercial, industrial and non-agricultural property, which was used for the above-mentioned purposes, since very long time. Learned counsel further submitted that even if, it is assumed that some disputed property was agricultural, even then, the whole suit cannot be rejected under Order 7 Rule 11 CPC because for the remaining non-agricultural property, the civil court was having jurisdiction to grant the relief claimed by the plaintiff.

22. Learned counsel for the defendant-respondents submitted that the impugned order of the trial court is perfectly legal, because the whole disputed property was agricultural, the plaintiff was not recorded as its tenure holder, as such, the plaintiff had to obtain declaration of her rights in that property, which can only be granted by the revenue court. Learned counsel submitted that since the whole disputed property was agricultural, as such, the plaintiff 's suit was barred by Section 206 of the U.P. Revenue Code. He further submitted that a part of the property was also situated in District Gautam Budhnagar, regarding which no relief can be granted by the Ghaziabad court, as such, the plaintiff 's suit was also barred on this ground.

23. I have heard the learned counsel of both the sides and perused the record.

24. It is apparent from the impugned order that the trial court has not examined the issue whether the plaintiff 's suit was barred by limitation or not, as such, this Court is also not examining that issue. The trial court has only rejected the plaint on the ground that the reliefs claimed by the plaintiff can only be granted by the revenue court since the civil courts jurisdiction was barred under Section 206 of the U.P. Revenue Code ,2006.

25. The Apex Court in the case of Sejal Glass Ltd. vs. Navilan Merchants Private Limited (2018) 11 SCC 780, while discussing whether the whole plaint can be rejected under Order 7 Rule 11 CPC, held as under:-

8. In (Sree Rajah) Venkata Rangiah Appa Rao Bahadur and Anr. v. Secretary of State and Ors.A.I.R. 1931 Madras 175 at 176, the Madras High Court held:

Referring to Section 54 of the old Code of Civil Procedure, the learned Judge states that that Section only provides for the rejection of a plaint in the event of any matters specified in that Section not being complied with and it does not justify the rejection of any particular portion of a plaint. Section 54 now corresponds to Order7, Rule11, Code of Civil Procedure. The plain meaning of that Rule seems to be that if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. Non-compliance with the requisites of Section 80, Code of Civil Procedure, was taken to be a ground covered by Clause (d) of Rule 11, above referred to. Even if it should be taken that that Clause does not strictly apply to the present case, I must hold that the suits are liable to dismissal on account of non-compliance with Section 80, Code of Civil Procedure.

It was further found that if the suit was dismissed for want of notice against the Government Under Section 80 Code of Civil Procedure, it cannot be allowed to proceed against the other Defendants for the reason that the Government's right to resume inam lands, on the facts of that case, stands unaffected, and that being so, the Plaintiff's claim to recover possession of such lands from other Defendants would also fall to the ground for the simple reason that they have no right then to resume those inams. It was, therefore, held on the peculiar facts of that case that for the reasons given the suit would fail as a whole.

*** *** ***

10. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 Code of Civil Procedure against one Defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other Defendants. This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order 7 Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.

(emphasis supplied)

26. The Apex Court in the case of Sri Boyenepally Srijayavardhan vs. V. Nirupama Reddy and others, Civil Appeal No.9904 of 2025 while discussing rejection of plaint under Order 7 Rule 11 CPC, held as under:-

10. It is a well-settled principle of law that where out of many reliefs claimed in the plaint, the plaintiff is found entitled to even one of them, the plaint cannot be rejected under Order 7 Rule 11 CPC. In such circumstances, the suit must be tried

on the basis of evidence led by the parties. Reliance may be placed upon the following judgments:

10.1. The case of Sejal Glass Limited vs. Navilan Merchants Private Limited (2018) 11 SCC 780 , is directly on the point. Para 8 of the report reads as follows:

This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.

10.2. This principle was reiterated in Central Bank of India & Anr. vs. Smt. Prabha Jain & Ors. 2025 INSC 95 , wherein it was held in para 24 of the report as follows:

24. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7, Rule 11 of the CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7, Rule 11 of the CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court□s jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11 of the CPC.

10.3. The Court clarified the scope of examination at the stage of Order 7 Rule 11 in Vinod Infra Developers Ltd. vs. Mahaveer Lunia & Ors. 2025 INSC 772 , wherein it was held in para 8 of the report as follows:

8. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

27. It is apparent from the above law laid down by the Apex Court in the case of Sejal Glass Ltd.(supra) and Sri Boyenepally Srijayavardhan (supra) that at the preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or the veracity of the claims. It is also clear that if, any triable issues arise from the pleadings, the suit cannot be summarily rejected. It is also clear that where out of many reliefs claimed in the plaint, the plaintiff is found entitled to even one of them, the plaint cannot be rejected under Order 7 Rule 11 CPC and in such circumstances, the suit must be tried on the basis of evidence led by the parties.

28. From the pleadings of the plaintiff in the plaint, it is very much apparent that she is claiming ownership of 1/2 share in the various residential and commercial properties of her late father Satyaprakash Garg who died on 12.5.2009, such as, ancestral residential three storeyed building and godown situated in Nayaganj, Ghaziabad, marriage home and banquet hall namely Imperial Garden and Heritage-Inn situated on Hapur road Ghaziabad, in the immovable property of Messers Aarti Steels Ltd and several other immovable property. Since, the above properties are

prima-facie residential, commercial and industrial property as such, on the ground that some of the disputed property is agricultural, the whole plaint cannot be rejected under Order 7 Rule 11 CPC. In respect of the above property, the plaintiff is entitled to claim the relief of declaration and permanent injunction from the civil court, regarding which the revenue court has got no jurisdiction.

29. Even the defendants in their application 38-C under Order 7 Rule 11 CPC, in paragraph 3, mentioned that the plaintiff never remained in possession of the agricultural and non-agricultural properties mentioned in paragraph 4 of the plaint. It is apparent that even the defendants accepted that some disputed property mentioned in the plaint was non-agricultural.

30. In view of the above facts and the circumstances, it is apparent that the trial court committed material illegality in rejecting the whole plaint on the ground, that the whole disputed property is agricultural, regarding which no relief can be granted to the plaintiff by the civil court and the relief sought by the plaintiff is barred by section 206 of the U.P. Revenue Code. It is also apparent that several properties are involved in the instant case as such, it was appropriate, that the trial court decided the whole issue on merits, after framing the issues and adducing the evidence of both the parties. In rejecting the plaint summarily, the trial court committed a grave error, which needs to be rectified by this Court, in exercise of its appellate jurisdiction. The impugned order is perverse and unsustainable. Accordingly, this appeal has merits and is liable to be allowed.

31. This appeal is hereby allowed. Consequently, the impugned judgment and decree of the trial court dated 3.12.2022 is set aside. Defendants application under Order 7 Rule 11 CPC stands dismissed. O.S. no. 782 of 2021 is restored to its original number.

32. The trial court is directed to decide the suit on merits, in accordance with law, within six months, without fail, from the date a certified copy of this order is communicated to it, without granting unnecessary adjournment to any side. The trial court is also directed to hear the suit day by day. District Judge, Ghaziabad is directed to monitor the progress of the suit closely and submit the progress report of the suit, every 15 days to this Court.

33. Registrar compliance is directed to communicate a copy of this order to the District Judge, Ghaziabad within 24 hours.

34. Interim order, if any, stands vacated.

(2025) 9 ILRA 930
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 148 of 2017

Km. Deepika Rani ...Appellant
Versus
Vinay Bansal & Ors. ...Respondent

Counsel for the Appellant:
Deepak Singh, Pramod Kumar Srivastava, Rishi Bhushan Jauhari

Counsel for the Respondents:
Ajay Singh, Amrendra Nath Singh, Vijay Prakash

Issue for Consideration

Matter pertains to whether the trial court committed material illegality in rejecting plaintiff's declaratory and injunction suit under O. VII R. 11(d) of Code of Civil Procedure on ground that it was barred by Section 6 of Hindu Succession (Amendment) Act, 2005, without properly appreciating that disputed property was self-acquired property of deceased father and that plaintiff, as his daughter, had legal share and cause of action to seek declaration and injunction against fraudulent gift deed.

Headnotes

Code of Civil Procedure, 1908 - O. 7. R. 11 (d) - Hindu Succession Act , 1956 - s. 6 - The plaintiff - appellant instituted Original Suit before Civil Judge (Senior Division), Hapur, seeking a declaration that registered gift deed dated 03.09.2016, allegedly executed by her in favour of her brother which was null and void, and for decree of permanent injunction restraining him from alienating or interfering with her 1/7th share in their late father's residential property - It was averred that after her father's death in 2002, property devolved upon his widow, five daughters, and one son in equal shares - Plaintiff alleged that defendant, under the pretext of obtaining a Power of Attorney and later agreement to sell, deceitfully procured her signatures and thumb impressions on documents which were subsequently registered as gift deed, without her knowledge or consent, and without any payment of consideration - Upon discovering fraud, plaintiff instituted present suit - Defendant moved application under O. VII R. 11(d) C.P.C., contending that plaintiff had no share in property as her father had died prior to Hindu Succession (Amendment) Act, 2005, and hence suit was barred u/s 6 thereo - Trial court accepted this plea and dismissed suit, leading to the instant first appeal u/s 96 C.P.C. before High Court.

Held: If the disputed property was self acquired property of plaintiff's father, who died in year 2002, , which according to Section 8 of Hindu Succession Act,1956 devolved on 7 legal heirs of her father and being one of legal heir, she also became owner of 1/7th share in disputed property, then plaintiff was having 1/7th share in disputed property, and even if, disputed property belonged to Mitakshara Joint Hindu Family, even then, she was a coparcener in that property and was entitled to same share as her brother w.e.f. 09.09.2005, i.e. date when Amendment Act of 2005 became effective - Plaintiff averred in plaint that she has got no share in disputed property - It is apparent that plaintiff was having right in disputed property on date of filing of suit on 04.10.2016 and as such, had cause of action to file instant suit - It is evident that plaintiff, having a 1/7th share in disputed property, challenged fraudulent gift deed executed by her brother and sought a declaration to declare it null and void, along with decree of permanent injunction restraining defendant from alienating her share or interfering with her possession, which is not barred by law - Trial court erred in holding plaintiff's suit barred u/s 6 of Hindu Succession (Amendment) Act, 2005. [Paras 32, 33, 35, 36] (E-13)

Case Law Cited

Prem Kishore & others v. Brahm Prakash & others, **(2023) 19 SCC 244;** Kuldeep Singh Pathania v. Bikram Singh Jaryal, **(2017) 5 SCC 345 - referred to.**

Vineeta Sharma v. Rakesh Sharma and others, **(2020) 9 SCC 1 (by three Judges) - relied on**

List of Acts

Code of Civil Procedure, 1908; Hindu Succession Act , 1956; Hindu Succession (Amendment) Act, 2005

List of Keywords

First Appeal u/s 96 C.P.C.; Declaratory suit; Registered gift deed; Null and void document; Permanent injunction; Disputed property; Application under O. 7 R. 11 C.P.C.; Legal heirs; 1/7th share in disputed house; Fraudulently executed; Registered Power of Attorney; Cancellation of Power of Attorney; Agreement to sell; Dishonoured cheque; Fraud and conspiracy; Void document; Mitakshara Joint Hindu Family; Self-acquired property; Section 6

of Hindu Succession Act; Hindu Succession (Amendment) Act, 2005; Coparcenary rights; Devolution of interest; Perverse finding; Perverse and illegal; Material illegality; Unsustainable in eye of law; Plaint discloses a cause of action; Suit barred by law.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 148 of 2017

From the Judgment and Decree dated 29.11.2016 of the Court of Ist Additional Civil Judge (Senior Division), Hapur in O.S. No.155 of 2016

Appearances for Parties

Advs. for the Appellant:

Deepak Singh, Pramod Kumar Srivastava, Rishi Bhushan Jauhari

Advs. for the Respondent:

Ajay Singh, Amrendra Nath Singh, Vijay Prakash

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

1. The instant first appeal under Section 96 C.P.C. has been preferred by the plaintiff-appellant against the impugned judgment and decree dated 29.11.2016 passed by the Court of Ist Additional Civil Judge (Senior Division), Hapur in O.S. No.155 of 2016, Km. Deepika Rani vs. Vinay Bansal, whereby her declaratory suit for declaring that the alleged registered gift deed dated 03.09.2016, which was fraudulently got executed from her by the defendant, be declared null and void and also for restraining the defendant by a decree of permanent injunction from alienating the disputed property of the above gift deed and for interfering in her peaceful possession of the disputed property, has been rejected on an application under Order 7 Rule 11 C.P.C. of the defendant.

2. Factual matrix is that the plaintiff-appellant, Km. Deepika Rani and the defendant-respondent, Vinay Bansal are real sister and brother. The plaintiff filed O.S. No.155 of 2016 in the trial court with the averments that her father, Mahaveer Prasad died in the year 2002, leaving behind his wife Smt. Chandrawati, daughters Smt. Sushma, Smt. Neeta Garg, Smt. Rama Singh, Km. Deepika(plaintiff), Smt. Priti Garg and son Vinay Bansal(defendant).

3. She further averred that the disputed house having municipal No.18-15/992 and 992(1-9) is a two storeyed house in an area of 1200 sq. yard, in which, on the ground floor in an area of 125.46 sq. meter, five rooms and one stair case are constructed and on the first floor in an area of 125.46 sq. meter, five more rooms are constructed, the boundaries of which were mentioned at the end of the plaint, which was situated in Mohalla Sarai Chand Khan, Friganj Road, Hapur.

4. She further averred that her and defendant□s father Late Mahaveer Prasad was the owner in possession of the above house, who died in the year 2002 and after his death, her mother, sisters and brother, all being legal heirs became the co-owners of the disputed house, in which, each was having 1/7th share

5. She further averred that the marriage of her other sisters have been solemnized, she is still unmarried, the defendant is her real brother.

6. She further averred that she wanted to sell her 1/7th share in the disputed house, which was valued in access of Rs.2 crores and from the sale consideration, she wanted to establish an Ashram for her salvation and public benefit because she decided to remain unmarried for her whole life.

7. She further submitted that she was also giving training of meditation and, as such, for a week or two weeks, she visited Osho Meditation Centre, Rishikesh, where she worked as meditation facilitator.

8. She further averred that when she expressed her intention to her mother and sisters for selling her share in the disputed house, then the defendant assured her that, if she sold her 1/7th share separately, then she will not get proper value of her share, as such, she should execute a Power of Attorney of her share in favour of the defendant, so he could by selling the whole property get proper value of it.

9. The plaintiff averred that being convinced by the above submission of the defendant, she executed registered Power of Attorney in favour of the defendant on 17.08.2016 and the defendant assured her that he will pay Rs.10 lacs within a week, but when this amount was not paid, then she had cancelled the registered Power of Attorney executed in favour of the defendant on 31.08.2016.

10. She further averred that after she got cancelled the registered Power of Attorney on 31.08.2016 in favour of the defendant, her mother, other sisters and defendant once again held consultations and on 03.09.2016, it was once again agreed that the plaintiff will execute an agreement to sell of her 1/7th share in the disputed property, for which, the defendant will pay her Rs.10 lacs as earnest money within a week and in accordance with this agreement, she was taken by the defendant on 03.09.2016 to Tehsil Compound, Hapur where in the presence of defendants friend Nitin Saraswat, Sudhir Agarwal and defendant□s female friend Km. Monika Bisla, by practising fraud and hatching conspiracy to usurp her share in the disputed property, in the garb of executing an agreement to sell, the defendant got her signature and thumb impression affixed on some papers and got them registered.

11. She specifically averred that the above documents were neither read over to her nor explained, because it was submitted to her that since the Registry Office is crowded, as such, she should read those documents subsequently and on this submission, she affixed her signature and thumb impression on the above documents without reading them, in which her mother Smt. Chandrawati and real sister Smt. Priti Garg were attesting witnesses.

12. She further averred that the defendant gave her post dated cheque no.000003 on 03.09.2016 for Rs.10 lacs drawn on HDFC Bank and when the cheque was deposited by her in her bank account in Punjab National Bank, Raj Nagar Branch, Ghaziabad, then it was dishonoured by the defendants bank with an endorsement that the defendant stopped payment of the cheque and subsequently on 19.09.2016, the dishonoured cheque was returned to her.

13. The plaintiff further averred that subsequently on inquiry, she became aware that on 03.09.2016 on the garb of executing agreement to sell, the defendant has got executed a registered gift deed of her 1/7th share in the disputed property, as such, the defendant has become the owner of her share in the disputed property without paying any consideration to her and by practising fraud upon her.

14. She further averred that on becoming aware of the above fraud

practised by the defendant on her, she informed her family members and relatives and informed them about the fraud committed by the defendant, but they refused to help her in this matter, as such, the plaintiff filed the suit for the following reliefs:-

(i). By a declaratory decree of the court granted in her favour against the defendant, it be declared that the registered gift deed dated 03.09.2016 with respect to her 1/7th share in house No.18-15/992 and 992(1-9) is a null and void document.

(ii). By decree of permanent injunction granted in her favour against the defendant, the defendant be restrained from alienating, transferring the disputed property and also from interfering in the peaceful possession of the plaintiff, with respect to her 1/7th share in the disputed property.

15. The defendant, Vinay Bansal moved an application under Order 7 Rule 11 (d) C.P.C. on the ground that the plaintiff has got no share in the disputed property in accordance with Section 6 of the Hindu Succession Act, as amended in the year 2005. The suit is barred by Section 6 of the above Act, as such, the plaintiff□s suit be rejected under Order 7 Rule 11 (d) C.P.C.

16. The plaintiff opposed the above application of the defendant by filing her objections, in which she averred that she only claimed the relief of declaring the gift deed dated 03.09.2016 as null and void and also the relief of permanent injunction, regarding which she has got cause of action and she has also paid court fees, as such, her suit is not barred under Order 7 Rule 11 CPC. She further averred that her suit was also not barred under Section 6 of the Hindu Succession Act. The defendant had not filed his written statement and he wanted to deliberately delay the disposal of the suit. With these submissions, it was prayed that the defendant□s application be rejected.

17. The trial court by the impugned order dated 29.11.2016 allowed the defendants application under Order 7 Rule 11 CPC on the ground that the plaintiffs father died in the year 2002 and the plaintiff averred that being the legal heir of her father, she became owner of 1/7 share in the disputed property but since, her father died before the enactment of the Hindu Succession (Amendment) Act 2005, as such, she had no right in the disputed property because the daughters were given right in the Mitakshara Joint Hindu Family property only through the above Amendment Act and prior to the enforcement of the Act, daughter had no right in the property of the Mitakshara Joint Hindu Family. The trial court concluded that since the plaintiffs father died before the enforcement of the above Act of 2005, as such, on the demise of the plaintiffs father in the year 2002, she did not inherit any right in the disputed property.

18. The trial Court also concluded that since the alleged gift deed was executed regarding the plaintiff□s 1/7th share in the disputed property, in which, legally the plaintiff had no share, as such, the alleged gift deed was a void document on the basis of which the defendant had acquired no right, title, interest in the disputed property and on the basis of the alleged gift deed, the plaintiff has also got no cause of action to file the instant suit. The trial court concluded that since the plaintiff had no share whatsoever in the

disputed property, as such, she had no right to get declared any document, void regarding her share in the disputed property, because it would be a futile exercise. With this reasoning, the trial court dismissed the plaintiff□s suit being barred under Order 7 Rule 11 CPC, aggrieved against which, the plaintiff filed the instant First Appeal under Section 96 CPC.

19. Learned counsel for the plaintiff-appellant submitted that the impugned order of the trial court is wholly perverse and illegal because from the perusal of the plaint averments, it is clear that the disputed property was the self acquired property of the plaintiffs father late Mahavir Prasad. The disputed property was never a property of the Mitakshara Joint Hindu Family, as such, the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005 never applied on the disputed property. He further submitted that since the disputed property was the property of plaintiff□s father Mahavir Prasad, as such, on his demise, the property devolved on his seven heirs equally, in which, the plaintiff had 1/7th share and regarding this share, the defendant had got fraudulently executed a gift deed from the plaintiff, in the garb of executing an agreement to sell.

20. Learned counsel for the appellant further submitted that the plaint averments specifically stated, that a fraud was practiced by the defendant upon the plaintiff by getting the alleged gift deed executed in his favour. The plaintiff has got cause of action to file the instant suit. Only after trial, it will be known whether the averments of the plaintiff are true or false and at the initial stage itself, the plaint cannot be outrightly rejected. With these submissions, it was prayed that the appeal be allowed and the suit be restored to its original number and the trial court be directed to decide the case on merits after hearing both the parties, in accordance with law.

21. Per contra, learned counsel for the defendant-respondent submitted that the order of the trial court is perfectly legal because the plaintiff was not having any share in the disputed property of her deceased father, as such, even if, it is assumed that the defendant had got fraudulently executed the alleged gift deed in his favour, even then, no right was conferred on the defendant on the basis of that gift deed which was a void document and since the plaintiff was not having any share in the disputed property, she is also not entitled to the relief of permanent injunction. Learned counsel for the respondent submitted that in view of these facts, the trial court had not committed any illegality in dismissing the plaintiff□s suit under Order 7 Rule 11 CPC.

22. I have learned counsel for the parties and perused the record.

23. The Apex Court in the case of Prem Kishore & others Vs. Brahm Prakash & others, (2023) 19 SCC 244 has held that for deciding an application under Order 7 Rule 11 (d) CPC, the following principles are to be followed:-

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

24. The Apex Court in the case of Kuldeep Singh Pathania vs Bikram Singh Jaryal, (2017) 5 SCC 345 has held that Court has to read the entire plaint as a whole to find out whether it discloses a cause of action or not. If the plaint discloses cause of action, then it cannot be rejected under Order 7 Rule 11 (a) CPC. Whether the plaint discloses a cause of action, is a question of fact, which has to be gathered on the basis of the plaint averments taking them to be true. As long as plaint discloses a cause of action, mere fact that plaintiff may not succeed in suit cannot be a ground for rejection of the plaint.

25. Section 6 of the Hindu Succession Act, 1956 as is substituted by Act 39 of 2005 (w.e.f. 09.09.2005) reads as under:-

Section 6- Devolution of interest in coparcenary property-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall-

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenery property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenery property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenery property shall be deemed to have been divided as if a partition had taken place and-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would

have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.--For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

Explanation--For the purposes of clause (a), the expression son, grandson or great-grandson shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation.--For the purposes of this section partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

26. The Apex Court in the Case of Vineeta Sharma vs. Rakesh Sharma and others, (2020) 9 SCC 1 (by three Judges), has held that daughter born before date of enforcement of the 2005 Amendment Act has got same rights as daughter born on or after the amendment. It was held that if a daughter is alive on the date of enforcement of Amendment Act, 2005, w.e.f. 09.09.2005, she becomes a coparcener w.e.f. the date of Amendment Act, 2005 (i.e. 09.09.2005) irrespective of whether she was born before the said amendment. It was further held that provisions in substituted Section 6 of the Act confer status of coparcener on daughter born before or after the amendment in the same manner as son with same rights and liabilities. It was further held that rights under substituted Section 6 can be claimed by daughter born prior to the amendment w.e.f. date of amendment with saving of post transactions as provided in proviso to Section 6 (1) read with Section 6 (5) of the Hindu Succession Act.

27. It was further held by the Apex Court that since right in coparcenery of daughter under the substituted Section 6 is by birth, it is not at all necessary that father of daughter should be living as on date of coming into force of the Amendment Act.

28. From the above law laid down by the Apex Court in the case of Vineeta Sharma (supra), it is evident that if a daughter is born before the enforcement of 2005 Amendment Act (w.e.f. 09.09.2005), even then, she has got right in the coparcenery property w.e.f. 09.09.2005 and it is also evident that, she has got the same rights in the same manner as a son. It is also apparent that it is not essential that her father should be alive on the date of enforcement of the Amendment Act i.e. 09.09.2005.

29. From the averments of the plaint, it is apparent that nowhere the plaintiff has claimed that she is a coparcener in the Mitakshara Hindu Joint Family of his father Mahaveer Prasad.

30. From the plaint averments, it is apparent that the disputed property was the self-acquired property of her late father Mahaveer Prasad, who died in the year 2002, which according to Section 8 of the Hindu Succession Act,1956 devolved on the 7 legal heirs of her father and being one of the legal heir, she also became owner of the 1/7th share in the disputed property. Even if, for the sake of argument, it is assumed that the disputed property was the property of Mitakshara Joint Hindu Family, even then, in the light of the law laid down by the Apex Court in the case of Vineeta Sharma (supra), she was having equal right in the coparcenery property, as her brother. The Apex Court has very clearly held that from 09.09.2005, i.e the date when the Amendment Act of 2005, became effective, a daughter who was alive on this date, became a coparcener, irrespective of whether she was born before the said Amendment.

31. In view of this pronouncement of law by the Apex Court, the finding of the trial court that the plaintiff was not having any share in the disputed property, on the demise of her father, is totally erroneous and perverse finding.

32. If the disputed property was the self acquired property of plaintiff□s father Mahaveer Prasad, then the plaintiff was having 1/7th share in the disputed property, and even if, the disputed property belonged to Mitakshara Joint Hindu Family, even then, she was a coparcener in that property and was entitled to the same share as her brother w.e.f. 09.09.2005, i.e. the date when the Amendment Act of 2005 became effective. The plaintiff has nowhere averred in the plaint that she has got no share in the disputed property.

33. It is apparent that the plaintiff was having right in the disputed property on the date of the filing of the suit on 04.10.2016 and as such, had cause of action to file the instant suit.

34. It is apparent that the plaintiff alleged that her brother had got executed fraudulently a gift deed from her, in the garb of executing an agreement to sell, which she claimed to be a void document. It is well settled that while deciding Order 7 Rule 11 C.P.C. application, the Court is not to examine the plaint case on merits whether the plaintiff is going to succeed or not, and only at this stage, the plaint averments are to be read to ascertain whether any cause of action has arisen to the plaintiff to file the instant suit.

35. In view of the above facts, it is apparent that plaintiff was having a share in the disputed property regarding which her brother had fraudulently executed a gift deed in his favour regarding which the plaintiff had sought relief of declaration for declaring the alleged gift deed to be a null and void document and for restraining the defendant by a decree of permanent injunction from alienating her 1/7th share in the disputed property and for restraining him from interfering in the peaceful possession of the disputed property, which cannot be said to be barred by any law.

36. Certainly, the trial court erred in concluding that the plaintiff□s suit was barred by the provisions of Section 6 of the Hindu Succession Act, as amended in the year 2005

37. In view of the above, the impugned judgment of the trial court is wholly perverse, which needs to be set aside by this Court.

38. Accordingly, the instant appeal is allowed and the impugned judgment and decree dated 29.11.2016 passed by the Court of Ist Additional Civil Judge (Senior Division), Hapur in O.S. No.155 of 2016, Km. Deepika Rani vs. Vinay Bansal, is set aside and the original suit is restored to its original number.

39. The trial court is directed to decide the suit as expeditiously as possible, in accordance with law.

40. Parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

41. Interim order, if any, stands vacated.

42. All the pending applications, if any, stand disposed of.

43. Office is directed to send back the original trial court record, if received, forthwith.

(2025) 9 ILRA 939
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 678 of 2018

Deen Dayal Pipraiya & Ors. ...Appellants
Versus
Ram Sharan ...Respondents

Counsel for the Appellants:
Sanjay Agarwal

Counsel for the Respondent:
Krishna Dutt Tiwari

Issue for Consideration

Matter pertains to whether the trial court was justified in dismissing the plaintiff's suit under O. VII R. 11(d) of Code of Civil Procedure on the ground that it was barred by res judicata u/s 11 C.P.C., without examining the pleadings and evidence of the parties, and merely on the basis of the defendant's application and documents.

Headnotes

Code of Civil Procedure, 1908 - s. 11, O. 7. R. 11 (d) - U.P. Zamindari Abolition and Land Reforms Act, 1950 - s. 331 - Specific Relief Act, 1963 - ss. 34, 38, 41 - Plaintiff - appellant acting as Manager of Sri Thakur Maithli Raman Jee Maharaj, Virajman Mandir Kunj, a private temple, instituted Original Suit seeking a decree of permanent injunction restraining defendant, Ram Sharan, from selling, transferring, or interfering with the temple property - It was pleaded that

temple property, originally owned by Smt. Janki Bai by virtue of registered gift deed dated 13.09.1938, was to be managed under her authority, and upon her removal of defendant from management for mismanagement, plaintiff was appointed as Manager - After her death, defendant allegedly attempted to unlawfully occupy and alienate temple property - Defendant, while admitting the gift deed and temple's existence, denied plaintiff's managerial rights, asserting that he himself had been managing temple since Janki Bai's demise and the issue had already been adjudicated in earlier proceedings culminating in Civil Appeal No. 45 of 1996, affirmed up to Supreme Court - Relying on plea of res judicata, trial court dismissed suit under O. VII R. 11(d) C.P.C., holding it barred u/s 11 C.P.C., giving rise to instant first appeal.

Held: In the instant case, it is evident that trial court while deciding defendant's application under O. 7 R. 11 CPC has considered his written statement, additional written statement and several documents submitted by him, which is contrary to law laid down by Apex Court - Trial court erred in considering written statement and documents submitted by defendant while disposing application under O. 7 R. 11 CPC - It is also apparent that plea of res judicata can only be examined after detailed examination of pleadings of parties in earlier suit and after perusing all relevant documents filed by parties, which is impossible at stage of deciding defendant's application under O. 7 R. 11 CPC - Thus, trial court committed illegality in dismissing plaintiff's suit under O. 7 R. 11 (d) CPC on ground of being barred by res judicata, as such, impugned judgment and decree passed by trial court is unsustainable in eye of law and liable to be set aside. [Paras 20, 21] (E-13)

Case Law Cited

Prem Kishore & others v. Brahm Prakash & others, **(2023) 19 SCC 244;** Pandurangan v. T. Jayarama Chettiar & another, **(2025) SCC Online SC 1425 - relied on**

Keshav Sood v. Kirti Pradeep Sood and others, **2023 SCC OnLine SC 2459 - referred to.**

List of Acts

Code of Civil Procedure, 1908; U.P. Zamindari Abolition and Land Reforms Act, 1950; Specific Relief Act, 1963.

List of Keywords

Appeal u/s 96 C.P.C.; Permanent injunction; Application under O. 7 R. 11(d) C.P.C.; Barred by res judicata u/s 11 C.P.C.; Irregularities in accounting; Malafide intention; Illegally occupy the property of temple; Selling, transferring property of temple; Registered gift deed; Manager of temple; Cause of action; Written statement; Revenue records; Suit barred by Section 331 of U.P.Z.A.L.R.Act, 1950; Barred by Section 34, 38, 41 of Specific Relief Act; Detailed examination of pleadings of parties in earlier suit; Remitted back to trial court; Framing of preliminary issue; Opportunity to lead oral and documentary evidence.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 678 of 2018

From the judgment and decree dated 10.11.2017 passed by the Court of Sri Radhey Mohan Srivastava, Civil Judge (Senior Division), Jhansi

Appearances for Parties

Advs. for the Appellant:
Sanjay Agrawal

Advs. for the Respondent:
Krishna Dutt Tiwari

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

1. The instant appeal under Section 96 C.P.C. has been preferred by the plaintiff in O.S. No.205 of 2016, Deen Dayal Pipraiya(deceased) through Lrs. vs. Ram Sharan against the judgment and decree dated 10.11.2017 passed by the Court of Sri Radhey Mohan Srivastava, Civil Judge (Senior Division), Jhansi

whereby the plaintiff□s suit for the relief of permanent injunction has been dismissed under Order 7 Rule 11(d) C.P.C. on the ground that it is barred by res judicata under Section 11 C.P.C.

2. Factual matrix is that the plaintiff-appellant filed O.S. No.205 of 2016 in the lower court with the averments that Sri Thakur Maithli Raman Jee Maharaj, Virajman Mandir Kunj i.e. plaintiff no.2 is a private temple, of which the plaintiff no.1, Deen Dayal Pipraiya was the Manager. The immovable property of the temple is situated in Chak no.40 in Village Nunar, Tehsil Garautha, District Jhansi, whose khata numbers alongwith total area were specified in the plaint.

3. It was further averred that previously the owner of temple-plaintiff no.2 was Smt. Janki Bai widow of Rajaram, who inherited the property from her father-in-law, Mathura Prasad through registered gift dated 13.09.1938, which was registered at Book No.1, Jeeld 102, pages 322-324 at Sr. No.296 on 14.09.1938 in the office of Sub Registrar, Mauranipur, in which it was specifically mentioned that the right of appointing Manager, for managing the property of the temple vested solely in Smt. Janki Bai, and in accordance with that right, one person, namely Ram Sharan was appointed as manager of the temple. The plaintiff further averred that since Ram Sharan did not honestly managed the affairs of the temple and committed irregularities in the accounting, as such, Smt. Janki Bai removed him, and thereafter, appointed plaintiff no.1 as the Manager of plaintiff no.2. The plaintiff further averred that Smt. Janki Bai died on 18.02.1983, her father-in-law, Mathura Prasad also died in the 1940, but his registered gift deed has not been cancelled by any competent court till date. It was further averred by the plaintiff that the defendant is a fraudulent person with malafide intention, who intends to illegally occupy the property of the temple plaintiff no.2, and to transfer it to some other person. The defendant also illegally harvested the crops standing on the property of plaintiff no.2. The defendant also managed to sell the property of plaintiff no.2, who is in the company of anti-social elements, who was having influence in political circles. It was also submitted that defendant had no concern with the property of the temple plaintiff no.2.

4. With these submissions, it was prayed that the defendant be restrained from selling, transferring the property of the plaintiff temple, from harvesting the crops standing on the temple property, by decree of permanent injunction granted by the court in favour of the plaintiffs.

5. During pendency of the suit, the defendant filed his written statement in which he accepted that on 13.09.1938, a registered gift deed by Mathura Prasad was executed in favour of Smt. Janki Bai, widow of Rajaram and he also accepted that a temple is situated on the disputed property. He also accepted that Janki Bai died on 18.02.1983 and also her father-in-law died in the year 1940, and also accepted that the registered gift deed has not been cancelled by any competent court till date, but he denied that plaintiff no.1 is the Manager of the temple plaintiff no.2, as such, it was averred that the plaintiff no.1 had no cause of action to file the present suit. The defendant specifically denied that plaintiff no.1 was the Manager of temple plaintiff no.2. He averred that after the death of Janki Bai, he was vested with the

right to manage the properties of temple-plaintiff no.2 and since then he was managing the affairs of the temple-plaintiff no.2. Since then his name is recorded in the revenue records and he is harvesting the crops. He specifically pleaded that he had earlier filed O.S. No.33 of 1989, Sri Thakur Maithli Raman Jee Maharaj vs. Deen Dayal Pipraiya and others in the Court of Civil Judge (Junior Division), Jhansi, which was dismissed on 27.02.1996, against which he had filed Civil Appeal No.45 of 1996, Thakur Maithli Raman Jee Maharaj vs. Deen Dayal Pipraiya in the Court of District Judge Jhansi, which was partly allowed by the Court of 6th Additional District Judge, Jhansi on 31.03.1998 and consequently plaintiff no.1, was permanently restrained from interfering in the affairs of the temple-plaintiff no.2.

6. He further submitted that the judgment in First Appeal No. 45 of 1996 was challenged in Second Appeal No.1011 of 1998, Deen Dayal Pipraiya vs. Thakur Maithli Raman Jee Maharaj before the High Court, which was dismissed on merits on 16.03.2001, against which Deen Dayal Pipraiya filed S.L.P. No.7976 of 2001 before the Apex Court, which was also dismissed on 11.05.2001, as such, the decision of the appellate court dated 31.03.1998 attained finality, on its basis, plaintiff no.1-Deen Dayal Pipraiya, had no right to manage the affairs of the temple-plaintiff no.2. He further submitted that since the judgment of the appellate court in Civil Appeal No. 45 of 1996, was affirmed up to the Apex Court, as such, the plaintiff no.1 had no right to re-agitate the issue again on the same facts in the instant suit, which was also barred by the provisions of Section 11 C.P.C. He further submitted that since plaintiff no.1□s name was not recorded in the revenue record, as such, the suit was also barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and also since plaintiff no.1 had no possession of the suit property, as such, plaintiff□s suit was also barred by Section 34, 38, 41 of the Specific Relief Act.

7. With these submissions, it was prayed that the plaintiff□s suit be dismissed.

8. During pendency of the suit, plaintiff no.1, Deen Dayal Pipraiya died on 08.04.2017, as such, his legal representatives were substituted in the suit.

9. In the trial court, the defendant moved an application under Order 7 Rule 11 C.P.C. with the submissions that the disputed property in the suit is similar to that in Civil Appeal No.45 of 1996, the parties are also the same and since the decision in that civil appeal was affirmed up to the Apex Court, and since the plaintiff no.1 filed the suit against the same parties in respect of the same property on false ground, as such, the plaintiff□s suit was barred by res judicata under Section 11 C.P.C. With these averments, it was prayed that the plaintiff□s suit be dismissed, being barred under Section 11 C.P.C.

10. The plaintiff did not file written objection against the defendant□s above application.

11. The trial court vide impugned order dated 10.11.2017 allowed the defendant□s application under Order 7 Rule 11 C.P.C. by concluding that the plaintiff□s suit was barred by res judicata Section 11 C.P.C., aggrieved against which, the instant first appeal has been filed by the plaintiff-appellants.

12. Learned counsel for the plaintiff-appellants submitted that the issue of res judicata is a mixed question of law and fact, which can only be appreciated after pleadings of the parties are complete and also there is oral evidence of the parties on record. Learned counsel further submitted that the issue of res judicata cannot be solely decided on the basis of plaint averments, without examining the documents submitted by the defendant.

13. Learned counsel submitted that it is well settled that at the time of disposing application under Order 7 Rule 11 C.P.C., only the plaint averments are to be examined, but since the plea of res judicata cannot be solely decided on the basis of plaint averments, as such, the trial court erred in dismissing the plaintiff suit under Order 7 Rule 11 CPC. Learned counsel relied on the case law of Prem Kishore & others Vs. Brahm Prakash & others, (2023) 19 SCC 244 and Pandurangan Vs. T. Jayarama Chettiar & another, (2025) SCC Online SC 1425 in support of his contentions.

14. Learned counsel for the appellant submitted that the issue of res judicata cannot be decided under Order 7 Rule 11 CPC and, as such, the trial court has committed material illegality in rejecting the plaintiff□s suit. With these submissions, it was submitted that the appeal be allowed and the matter be remitted back for disposal in accordance with law.

15. None is present for the defendant-respondent.

16. Heard the learned counsel for the plaintiff-appellants and perused the record.

17. The Apex Court in the case of Prem Kishore (supra) while discussing whether a suit can be dismissed under Order 7 Rule 11 (d) CPC as being barred by res judicata, held as under:-

28. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In Kamala and others v. K.T. Eshwara Sa (2008) 12 SCC 661, the trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed [Kamala v. K.T. Eshwara Sa, 2007 SCC OnLine Kar 819] by the High Court. S.B. Sinha, J. speaking for the two-Judge Bench examined the ambit of Order 7 Rule 11(d)CPC and observed :(SCC pp. 668-69, paras 21-22)

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount

of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.

30. Similarly, in Soumitra Kumar Sen v. Shyamal Kumar Sen (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329 , an application was moved under Order 7 Rule 11CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The trial Judge dismissed the application and the judgment of the trial court was affirmed in revision by the High Court. A.K. Sikri, J. while affirming the judgment of the High Court, held :(SCC p. 649, para 9)

9. In the first instance, it can be seen that insofar as relief of permanent and mandatory injunction is concerned that is based on a different cause of action. At the same time that kind of relief can be considered by the trial court only if the plaintiff is able to establish his locus standi to bring such a suit. If the averments made by the appellant in their written statement are correct, such a suit may not be maintainable inasmuch as, as per the appellant it has already been decided in the previous two suits that Respondent 1-plaintiff retired from the partnership firm much earlier, after taking his share and it is the appellant (or appellant and Respondent 2) who are entitled to manage the affairs of M/s Sen Industries. However, at this stage, as rightly pointed out by the High Court, the defence in the written statement cannot be gone into. One has to only look into the plaint for the purpose of deciding application under Order 7 Rule 11CPC. It is possible that in a cleverly drafted plaint, the plaintiff has not given the details about Suit No. 268 of 2008 which has been decided against him. He has totally omitted to mention about Suit No. 103 of 1995, the judgment wherein has attained finality. In that sense, the plaintiff-Respondent 1 may be guilty of suppression and concealment, if the averments made by the appellant are ultimately found to be correct. However, as per the established principles of law, such a defence projected in the written statement cannot be looked into while deciding application under Order 7 Rule 11CPC.

Referring to Kamala [Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661] , the Court further observed that :(SCC p. 650, para 12)

12. The appellant has mentioned about the earlier two cases which were filed by Respondent 1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the courts in those proceedings. In fact, copies of the orders passed in judgment and decree dated 31-3-1997 passed by the Civil Judge (Junior Division), copy of the judgment dated 31-3-1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated 31-7-2014 passed by the Civil Judge, Junior Division in Suit No. 268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial court gave a categorical finding that as per MoU signed between the parties, Respondent 1 had accepted a sum of Rs 2,00,000 and, therefore, the said suit was barred by principles of estoppel, waiver and acquiescence. In a case like this, though recourse to Order 7 Rule 11CPC by the appellant was not appropriate, at the same time, the trial court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions.

31. This Court in Soumitra Kumar Sen [Soumitra Kumar Sen v. Shyamal Kumar Sen, (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329] was examining a case where the defendant had moved an application before the trial court under Order 7 Rule 11 of CPC requesting the court to reject the plaint on the ground of res judicata. The Courts below had rejected such a prayer upon which the defendant had approached this Court. This Court, referring to its various judgments on the point, upheld such orders observing that if the averments made by the appellant in the written statement are correct, the suit may not be maintainable. However, at this stage, as rightly held by this Court, the defence in the written statement cannot be gone into. One has to look into the plaint for the purpose of deciding application under Order 7 Rule 11CPC.

33. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d)CPC can be summarised as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (a) the previous suit is decided, (b) the issues in the subsequent suit were directly and substantially in issue in the former suit; (c) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (d) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration

of the pleadings, issues and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

(See : Srihari Hanumandas Totala v. Hemant Vithal Kamat (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489])

18. The above principle of law was reiterated by the Apex Court in the case of Pandurangan (supra). It was further held that in Keshav Sood v. Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459, this Court took a strong view against the plea of res judicata being raised in applications seeking rejection of plaint and held as follows:-

5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.

19. From the perusal of the above law laid down by the Apex Court in the case of Prem Kishore (supra) and Pandurangan (supra), it is evident that the issue of res judicata could not have been decided by the trial court, on an application under Order 7 Rule 11 CPC, where only the statement in the plaint are to be perused. It is clear that under Order 7 Rule 11 CPC, the written statement and the documents submitted by the defendant cannot be examined, to arrive at a conclusion that the suit is barred by res judicata. It is clear that the plea of res judicata requires detailed examination of the pleadings, issues, and decision in the previous suit which is beyond the scope of Order 7 Rule 11 CPC, where only the plaint averments and documents of the plaintiff can be perused.

20. In the instant case, it is evident that the trial court while deciding the defendants application under Order 7 Rule 11 CPC has considered his written statement, additional written statement and several documents submitted by him, which is contrary to the above law laid down by the Apex Court. The trial court erred in considering the written statement and documents submitted by the defendant while disposing application under Order 7 Rule 11 CPC. It is also apparent that the plea of res judicata can only be examined after detailed examination of the pleadings of the parties in the earlier suit and after perusing all the relevant documents filed by the parties, which is impossible at the stage of deciding defendant"s application under Order 7 Rule 11 CPC.

21. In view of the above, it is clear that the trial court committed material illegality in dismissing the plaintiffs suit under Order 7 Rule 11 (d) CPC on ground of being barred by res judicata, as such, the impugned judgment and decree passed by the trial court is unsustainable in the eye of law and is liable to be set aside.

22. The appeal is hereby allowed. Consequently, the impugned judgment and decree of the trial court dated 10.11.2017 in O.S. No.205 of 2016 is set aside, the original suit is restored on its original number. The matter is remitted back to the trial court.

23. The trial court is directed to decide the issue of res judicata after framing it as a preliminary issue and after giving opportunity to both the parties to lead oral and documentary evidence on this issue, in accordance with law, expeditiously.

24. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

25. Office is directed to prepare the decree accordingly.

26. Interim order, if any, stands vacated.

27. All the pending applications, if any, stand disposed of.

(2025) 9 ILRA 947
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 719 of 2022

Shailesh Kumar ...Appellant
Versus
Smt. Vibha Gupta ...Respondent

Counsel for the Appellant:
Shashi Prakash Rai, Shrinath

Counsel for the Respondent:
Anand Kumar Srivastava, Udayan Nandan

Issue for Consideration

Issue pertains to whether the trial court committed a manifest illegality in rejecting plaintiff's suit under O. VII R. 11 of Code of Civil Procedure, 1908, on the grounds of lack of territorial jurisdiction and alleged bar u/s 4(1) of Benami Transactions (Prohibition) Act, 1988, without confining its consideration to plaint averments and documents filed by plaintiff, as required by law.

Headnotes

Benami Transactions (Prohibition) Act, 1988 - s. 4(1) - Code of Civil Procedure, 1908 - O. 7 R. 11, s. 17 - Specific Relief Act , 1963 - s. 34 - Plaintiff - appellant instituted a civil suit seeking a declaration of ownership and consequential relief in respect of certain immovable property, asserting that property in question was purchased benami in the name of defendant, though the entire consideration had been paid by plaintiff from his own lawful sources - Trial court, upon application filed by defendant under O. VII R. 11 of Code of Civil Procedure, 1908, rejected the plaint on grounds that suit was barred by Section 4(1) of Benami Transactions (Prohibition) Act, 1988, and that court lacked territorial jurisdiction to entertain the claim - Aggrieved by such rejection, plaintiff preferred First Appeal before High Court, contending that trial court erred in law by dismissing the plaint without confining itself to averments contained therein and by entering into a factual examination of issues that could be decided only after trial, thereby vitiating the impugned order as being contrary to settled legal principles governing the exercise of jurisdiction under O. VII R. 11 CPC.

Held: From the law laid down by Apex Court in the case of Pushpalata (infra), Mangathai Ammal (infra), Marcel Martins (infra) and Shaifali Gupta (infra) dealing with Benami Transactions (Prohibition) Act,1988 before its amendment in year 2016, and after its

amendment, it is apparent that a person can purchase property, whether movable or immovable, in the name of his wife or unmarried daughter and it shall be presumed, unless contrary is proved, that said property had been purchased for benefit of wife or unmarried daughter - It is clear that bar enacted by Section 4(1) of Act, 1988 is not applicable where property is held by a person who is coparcener in Hindu undivided family and the property is held for benefit of coparcener in family - It is also not applicable when person in whose name property is held is a trustee or stands in fiduciary capacity for benefit of person towards whom he stands in such capacity - Husband may institute a suit asserting real ownership by alleging that his wife is only a benami holder, but the burden squarely lies on him to establish benami nature of property through evidence or circumstances - Wife is entitled to rebut claim by demonstrating that property was purchased from her own funds - Whether the case falls within exception u/s 4(3) of Act, 1988 is a matter to be determined on the basis of evidence - Bar u/s 4(1) cannot be decided solely from plaint averments - It is also evident that whether plaintiff should have claimed cancellation of allotment dated 6.6.2003 in favour of defendant by Noida or not, will depend upon whether plaintiff is real owner of disputed property or not - At the stage of considering application under O. 7 R. 11 CPC, plaintiff 's suit cannot be rejected on this ground - Thsu, trial court has committed material illegality in allowing defendants application under O. 7 R. 11 CPC - Impugned order is perverse and set aside - Consequently, appeal has merit and allowed. [Paras 35, 36, 37, 39, 40] (E-13)

Case Law Cited

Shivnarayan (D) By Lrs. v. Maniklal (D) Through Lrs. & Ors., **(2020) 11 SCC 629;** Manoj Arora v. Mamta Arora, **2018 SCC OnLine Del 10423;** Saurabh Gupta v. Archna Gupta & 2 Ors., **2024 SCC OnLine All 2268;** Gagandeep Kaur v. Rattandeep Singh Grover & Ors., **2025 Supreme (Online) (Del) 3297;** Vinod Infra Developers Ltd. v. Mahaveer Lunia and others, **2025 SCC OnLine SC 1208;** Keshav Sood v. Kirti Pradeep Sood and others, **2023 SCC OnLine SC 2459;** Pawan Kumar v. Babulal (Since deceased through Lrs.) & Others, **(2019) 4 SCC 367; referred to**

Pushpalata v. Vijay Kumar(Dead) through Lrs. and others, **2022 SCC OnLine SC 1152;** Mangathai Ammal(Died) through Lrs. and others v. Rajeswari and others, **(2020) 17 SCC 496;** Marcel Martins v. M.Printer and others, **(2012)5 SCC 342;** Shaifali Gupta v. Vidya Devi Gupta and others, **2025 SCC OnLine SC 1181 - followed**

List of Acts

Benami Transactions (Prohibition) Act, 1988; Code of Civil Procedure, 1908; Specific Relief Act , 1963.

List of Keywords

First Appeal u/s 96 C.P.C.; O. VII R. 11 C.P.C.; Rejection of plaint; Territorial jurisdiction; Cause of action; Permanent injunction; Bar u/s 4(1) of Benami Transactions (Prohibition) Act, 1988; Maintainability of suit; Relief of Declaration; Relationship of husband and wife; Power of attorney - Allotment of plot; Restrained from selling, mortgaging, alienating, transferring; Benami owner of disputed immovable property; Sale Deeds in respect of disputed property; Cancellation of sale deeds; Coparcener in Hindu undivided family; Benefit of coparcener in family - Property purchased from personal income; Jurisdictional infirmity; Impugned order set aside; Matter remitted to trial court; Court of competent jurisdiction

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 719 of 2022

From the Judgment and Decree dated 04.05.2022 passed by ACJM Court No. 3, Gautam Buddha Nagar in O.S. No. 465 of 2017

Appearances for Parties

Advs. for the Petitioner:
Shashi Prakash Rai, Shrinath

Adv. for the Respondent:
Anand Kumar Srivastava, Udayan Nandan

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

1. The instant appeal under Section 96 of the CPC has been filed by the plaintiff in O.S. No. 465 of 2017 Shailesh Kumar versus Smt. Vibha Gupta, against judgment and decree dated 4.5.2022 passed by the ACJM Court no. 3, Gautam Buddha Nagar, whereby the plaintiff 's suit has been rejected under Order 7 Rule 11 CPC on the ground that, one of the immovable property regarding which relief has been claimed by the plaintiff, was situated in District Auraiya, which was outside the jurisdiction of the Court and further, the plaintiff had not claimed relief of cancellation of lease deed executed in favour of the defendant by the Noida.

2. Factual matrix is that the plaintiff appellant Shailesh Kumar filed O.S. no.465 of 2017 against the defendant Smt. Vibha Gupta with the averments that plaintiff was a freelance journalist by profession, who published weekly newspaper 'Cyber Infosis'. The defendant's second marriage was solemnised with the plaintiff on 4.3.2000 as per the rights and rituals of Arya Samaj in Noida. The defendants first marriage was solemnised with Rishindra Jai Piparsaniya son of unknown, resident of Chattarpur, Madhya Pradesh, out of that wedlock a son Shishil Kumar was born. The defendant in furtherance of criminal conspiracy by disclosing that she was widow, solemnised marriage with the plaintiff and refused to bear children and emotionally pressurised him for adopting her 10-year-old son, from her previous marriage. In deference to the defendant's wishes, the plaintiff performed his duties as husband and father, for the sake of happy marital life, did not procreate any children from the wedlock with the defendant and agreed to adopt the son of the defendant from a previous marriage, as his heir.

3. The plaintiff further averred that since he was not having any fixed source of income, from the savings made from his income, for securing the future of his family, he applied for a plot, for publication of his newspaper in institutional category of a scheme of Noida, through application no. 369, registration number 18/2 dated 15.1.2003, accompanied with processing fees of ₹ 5000, which was paid by pay order no. 895834 dated 15.1.2003 and also deposited 10% of the estimated cost of the plot amounting to rupees 1,65,000 through demand draft with the State Bank of Patiala, Noida Branch on 15.1.2003.

4. The plaintiff further submitted that the defendant on the pretext of her son's future, began to emotionally pressurise him and compelled him for getting allotment of the above plot in her favour. Thereafter, the plaintiff in order to get the allotment in favour of the defendant, moved an application supported by an affidavit, before Noida, on the basis of which lease deed of plot number C 20/6B, area 350 yd in sector 62, Noida, Gautam Buddha Nagar was executed in favour of the defendant by Noida on 6.6.2003.

5. The plaintiff further averred that since the defendant was previously married and not taken divorce from her previous husband as such, in order to avoid any legal complication, the defendant began to write the name of her father in all the documents, in place of her husband- plaintiff.

6. The plaintiff further averred that defendant pressurised him on the pretext that if the plot was allotted in the name of plaintiff then if, some thing untoward happened to him, then the plaintiffs siblings will claim the plot, which will harm the financial and legal interests of her son. Due to this pressure, in order to secure the interests of the defendant and her son, the

plaintiff was compelled to get the allotment of plot made in favour of the defendant.

7. The plaintiff further averred that besides the above property, he from his own funds purchased in the defendants village Udanpura, Mauja Chichauli, tehsil and District Auraiya, plot having Gata no. 430Ka/5.29 ha and half share of Gata no. 432Ka/1.72 ha, by three sale deeds, for establishing college, in the name of the defendant, which were registered in the office of the sub-registrar Auriya in book no.1, khand 714, page number 15/32 serial no. 3331, page number 45/70 serial no. 3333 and page number 33/44 serial no. 3332. The defendant appointed him as her power-of-attorney in respect of the above property situated in District Auraiya, which was registered in the office of sub-registrar Auraiya in book no.4, Jild no.9, page no. 101 □ 112, serial no. 22 on 27.4.2013, which was subsequently, by hatching criminal conspiracy, without obtaining the consent of plaintiff, was cancelled on 30.9.2014 which was registered in book no.4, Jild no. 10, at pages 261 □ 271 at serial no. 20. According to the plaintiff, the defendant made a false statement for cancelling the above power-of-attorney that her husband remained out of the station due to his professional/personal work and was not able to look after her property.

8. It is the specific assertion of the plaintiff that he is the owner of the above-mentioned properties, which was purchased from his personal income. The plaintiff further averred that the defendant in collusion with her son from her previous marriage, was threatening to misuse his documents, to falsely implicate him in cases of woman harassment, domestic violence and criminal conspiracy. He further averred that his entire savings had been spent on the educational expenses of defendants son Shishil Kumar. At present, he was suffering from diabetes and other ailments, was living in penury, as such, he intended to sell the above properties for meeting out the expenses of his treatment and future expenses. The defendant was neither willing to get him treated nor willing to transfer the property in his favour. He further averred that at present the market value of the plot situated in Noida was about rupees one crore. Despite having property, he was financially dependent on the defendant. He was not able to utilise the above properties for his own need.

9. The plaintiff specifically averred that since the above plot of Noida was purchased from his own income, he was the real owner of that plot and after the allotment of plot in the year 2003, he was in continuous and undisputed possession of that plot. He further averred that the defendant ordered him to remove his possession from the above plot on 7.7.2017 and was intending to sell the above plot and if, the defendant succeeded in doing so, the purpose of the suit shall be frustrated.

10. The plaintiff claimed the following reliefs in the suit:-

(i)By declaratory decree granted in favour of the plaintiff against the defendant, the plaintiff be declared the real owner of property number C □ 20/6B, sector 62, Noida, Gautam Buddha Nagar.

(ii)By decree of permanent injunction granted in favour of the plaintiff against the defendant, the defendant be restrained from selling, mortgaging, alienating, transferring in any manner whatsoever and from interfering in the peaceful possession of the

plaintiff and from dispossessing him, except by adopting due procedure of law, from the above property.

(iii)By declaratory decree granted in favour of the plaintiff against the defendant, the plaintiff be declared the real owner of the property situated in khasra no. 430 ka/area 5.29 ha and half share of khasra no.432ka/area 1.72 ha situated in village Udanpura, mauja Chichauli, District Auraiya.

11. The defendant moved an application under Order 7 Rule 11 CPC with the averments that the plaintiff has filed the suit against her for the relief of declaration and permanent injunction. The plaintiff has averred that she was previously married and not divorced her previous husband, which implies that there was no relationship of husband-and-wife between the plaintiff and the defendant. It was also evident that the plaintiff has alleged that the defendant was the Benami owner of the disputed property and has claimed the relief that he be declared the real owner of the disputed property as such, the suit was barred by Section 4(1) of the Benami Transactions (Prohibition) Act of 1988. It was also averred that the plaintiff sought declaration of ownership regarding agricultural land situated outside District Gautam Buddha Nagar, the jurisdiction for which vests in the revenue court, as such, the court was not competent to grant that relief. Due to this, the suit was liable to be dismissed under Order 7 Rule 11(d) CPC.

12. The plaintiff opposed the above application of the defendant in the trial court by submitting that provisions of Order 7 Rule 11 CPC was not applicable in the facts and circumstances of the case. The defendant had already executed 15 sale deeds in respect of the disputed property, during the pendency of the suit and intended to sell the remaining property, as such, the defendant's application be rejected.

13. The trial court concluded that undisputedly the lease deed of Noida property was executed on 6.6.2003 in favour of the defendant, there was no proof of possession of plaintiff on the above disputed property. It was further concluded that regarding the other property situated in District Auraiya, no relief can be granted by the court because it was outside the jurisdiction of the court. In view of the above, it was concluded that the plaintiff had no cause of action to file the suit. It was further concluded by the trial court that the plaintiff had not challenged the lease deed dated 6.6.2003 and since there was no dispute regarding its execution, as such, the suit was also barred on this ground.

14. Learned counsel for the plaintiff-appellant submitted that the impugned order of the trial Court is perverse. Learned counsel submitted that at the stage of deciding Order 7 Rule 11 CPC application, only the plaint averments and the documents submitted in support, by the plaintiff are to be examined, neither the written statement of the defendant nor any documents submitted by it, can be looked into by the trial court, while deciding the above application. Learned counsel also submitted that at this stage the merits of the case of plaintiff was also not to be examined. The court was not supposed to examine whether the plaintiff is telling truth or not.

15. Learned counsel further submitted that the trial court erred in concluding that with respect to the property situated in

District Auraiya, the court had no jurisdiction to grant any relief to the plaintiff. Learned counsel submitted that since the cause of action between the plaintiff and defendant is same, as such, under Section 17 of the CPC, the court also had the jurisdiction in respect of the property situated in District Auraiya.

16. Learned counsel further submitted that the plaintiff had specifically averred that there was relationship of husband-and-wife between the plaintiff and the defendant and for proving this relationship, plaintiff had filed power-of-attorney granted by the defendant in favour of the plaintiff, which specifically mentioned that the defendant was the wife of the plaintiff. Learned counsel further submitted that since there was a relationship of husband-and-wife between the plaintiff and the defendant as such, the disputed property was not a benami property. With these submissions, it was prayed that the appeal be allowed. Learned counsel for the plaintiff / appellant has relied upon the following judgments in support of his submissions:-

(i) Shivnarayan(D) By Lrs. vs. Maniklal(D) Through Lrs. & Ors.(2020)11 SCC 629

(ii) Manoj Arora vs. Mamta Arora 2018 SCC OnLine Del 10423

(iii) Saurabh Gupta vs. Archna Gupta & 2 Ors. 2024 SCC OnLine All 2268

(iv) Gagandeep Kaur vs. Rattandeep Singh Grover & Ors. 2025 Supreme(Online)(Del)3297

17. Per contra, learned counsel for the defendant-respondent submitted that the impugned order of the trial court was perfectly legal because the trial court was not having jurisdiction with respect to the immovable property situated in District Auraiya. Learned counsel also submitted that there was no relationship of husband-and-wife between the plaintiff and the defendant. The disputed property was purchased by the defendant, from her own funds, which was self acquired property of defendant, as such, the plaintiff had no right to claim declaration with respect to that property. Learned counsel further submitted that the defendant had already executed several sale deeds of the disputed land regarding which, relief of cancellation of sale deeds had not been claimed by the plaintiff, the plaintiff was also not in possession of the disputed property as such, the plaintiffs suit for simplicitor relief of declaration, without seeking possession of the disputed land and also without seeking cancellation of the sale deeds executed by the defendant in favour of the third parties, was not maintainable and relief of declaration cannot be granted to the plaintiff regarding the disputed property. The plaintiff 's suit was barred by section 34 of the Specific Relief Act. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed.

18. I've heard the learned counsel of both the sides and perused the record of the trial court.

19. The Apex Court in the case of Vinod Infra Developers Ltd. vs. Mahaveer Lunia and others 2025 SCC OnLine SC 1208 has held that at the preliminary stage of deciding Order 7 Rule 11 CPC application, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

20. The Apex Court in the case of Keshav Sood vs. Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459 has held that the scope of Rule 11 of Order 7 of CPC is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of defendant and documents relied upon by him cannot be looked into while deciding such application.

21. The Apex Court in the case of Shivnarayan(dead) by Lrs.(supra), while discussing the place of suing, where the immovable property or properties is situate in jurisdiction of different courts, held as under:-

33. Sections 16 and 17 CPC are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16.

34. From the foregoing discussions, we arrive at the following conclusions with regard to ambit and scope of Section 17 CPC:

34.1. The word property occurring in Section 17 although has been used in singular but by virtue of Section 13 of the General Clauses Act it may also be read as plural i.e. properties.

34.2. The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

34.3. A suit in respect of immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

34.4. A suit in respect of more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

22. It is apparent from the above law laid down by the Apex Court in the case of Vinod Infra Developers Ltd.(supra) and Keshav Sood(supra) that at the time of deciding Order 7 Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it. Further, the court has also not to examine the plaintiffs case on merit to determine whether he is going to succeed or not ? It is also apparent that if any triable issue arises out of the pleadings of the plaintiff, then the plaint cannot be summarily rejected.

23. From the law laid down by the Apex Court in the case of Shivnarayan(supra) it is clear that Section 17 of the CPC can be applied in the event there are several properties, one or more of which may be located in different jurisdiction of Courts. It is also clear that the suit filed in a court pertaining to properties situate in jurisdiction of more than two courts, the suit is maintainable only, when it is filed on one cause of action. It is clear that the suit in respect of immovable property or properties situate in

jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

24. It is apparent that in the instant case one immovable property is situated in District Gautam Buddha Nagar and the other is situated in District Auraiya as such, the plaintiff can file suit for declaration of his rights in the above properties, in any court within whose local limits of jurisdiction any portion of the property or one property is situated. In this case, the plaintiff could have filed the suit either in the court of District Gautam Buddha Nagar or in Auraiya, but he has chosen to file the suit in the court of District Gautam Buddha Nagar, which cannot be said to be barred, insofar as the issue of jurisdiction of the court is concerned. From the above law laid down by the Apex Court in the case of Shivnarayan(supra) it is clear that the suit filed by the plaintiff claiming the relief of declaration of ownership of the disputed property held in the jurisdiction of district court Gautam Buddha Nagar and Auraiya, is maintainable in the civil court of District Gautam Buddha Nagar, because the cause of action of both the suits was same. The plaintiff was claiming declaration in respect of both the disputed properties on the ground that he was the real owner of these properties and the defendant, his alleged wife, was only benami owner.

25. It is also apparent that the plaintiff has specifically averred that his marriage was solemnised with the defendant on 4.3.2000 as per rights and rituals of the Arya Samaj in Noida. The plaintiff has also filed the copy of the power-of-attorney dated 27.4.2013 executed by the defendant in favour of plaintiff, in which it is specifically averred that the plaintiff is the husband of defendant. This power-of-attorney relates to the disputed immovable property situated in District Auraiya.

26. It is also apparent that the trial court concluded in the impugned order that the disputed property belongs to the defendant and there was no dispute about this, which is totally incorrect because, the plaintiff has alleged in the plaint that he was the real owner of the disputed property, the disputed property was purchased from his money, only on the pressure exerted by the defendant. It has been specifically averred by the plaintiff that he was the real owner of the disputed property and the defendant was in reality, the benami owner.

27. Besides this, the plaintiff also averred in the plaint that he was in possession of the disputed property. The trial court was not supposed to examine the issue of possession on merits at that stage, by holding that no documentary proof regarding possession has been filed by the plaintiff. If any documentary proof was ever required, then a copy of the above mentioned power-of-attorney dated 27.4.2013 itself was sufficient to prima-facie prove the possession of the plaintiff, in which, the address of the plaintiff is recorded as C-20/6B, sector 62, Noida, Gautam Buddha Nagar, which is also the address of the disputed property.

28. The trial court also concluded in the impugned order that the lease deed of the disputed property situated in Gautam Buddha Nagar was executed in favour of the defendant by Noida on 6.6.2003 but in the instant suit filed in the year 2017, the plaintiff has not claimed the relief of cancellation of the above lease deed as such, the suit was also barred by law.

29. It is also apparent that though the defendant had taken a plea in her Order 7 Rule 11 CPC application that the plaintiff 's suit was barred under Section 4(1) of the Benami Transactions(Prohibition) Act, 1988 but the trial court did not record any finding on this. However, this issue has been pressed by the learned counsel for the defendant-respondent, as such, this Court has deemed appropriate to record its finding on that issue.

30. For appreciating the controversy in correct perspective, it will be appropriate to examine the relevant provisions of The Benami Transactions (Prohibition) Act,1988. Section 2(a), 2(c), 3 and 4, of the Act, insofar as they are relevant, reads as under:-

2.Definitions.-In this Act, unless the context otherwise, requires,

(a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

*** *** ***

(c) property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of benami transactions.-(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to-

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) *******

Explanation-*******

(3)*******

(4)*******

4. Prohibition of the right to recover property held benami.-(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2)No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

31. The Apex Court in the case of Pushpalata vs. Vijay Kumar(Dead) through Lrs. and others 2022 SCC OnLine SC 1152, while discussing the circumstances which can be taken as a guide to determine the nature of the transaction, held as under:-

22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam (2004) 7 SCC 233:

47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam (Supra) wherein a Division Bench of this Court held:

13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale.(Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present

transaction on the touchstone of the above two indicia.

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18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.

23. As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner - in cases which form the exception, under Section 4 (3) - has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer (2012) 5 SCC 342. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:

22. It is manifest that while the expression □fiduciary capacity□ may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-□-vis the plaintiffs-respondents.

24. The first and foremost of the circumstance relevant to the question at hand is the fact that the property in question was tenanted by Smt. Stella Martins-mother of the parties before us. It is common ground that at the time of her demise she had not left behind any Will nor is there any other material to suggest that she intended that the tenancy right held by her in the suit property should be transferred to the appellant to the exclusion of her husband, C.F. Martins or her daughters, respondents in this appeal, or both. In the ordinary course, upon the demise of the tenant, the tenancy rights should have as a matter of course devolved upon her legal heirs that would include the husband of the deceased and her children (parties to this appeal). Even so, the reason why the property was transferred in the

name of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of the plaintiffs that the defendant-appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis-□-vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs.

25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-□-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant.

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27. In the light of these factors, and the law declared by this court which has elaborated the circumstances under which a claim against a benami owner can be said to be proved, under Section 4(3)(a) of the Act, the conclusions drawn by the trial court and first appellate court, are plainly erroneous, given the evidence on record. The High Court, in the opinion of this court, fell into error in not noticing the correct position in law.

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30. In the opinion of this court, the High Court fell into error, in ignoring that the circumstances of this case, where the first plaintiff had proved that the properties had been purchased, with his funds, and the sons were minors, with no source of

income. The second defendant's position-throughout all the proceedings, was that the properties were that of the first plaintiff; in other words, he admitted to the suit averments. The plaintiff also proved that he had possession of the property, by adducing positive evidence of tenants, who paid rent to him. In these circumstances, the elements necessary to establish benami ownership within the meaning of Section 4 (3) (a) of the Act, in terms of the judgments in Binapani Paul and Valliammal (supra) have been satisfied by the first plaintiff.

32. The Apex Court in the case of Mangathai Ammal(Died) through Lrs. and others vs. Rajeswari and others (2020)17 SCC 496, while discussing the applicability of the Amendment Act of 2016, held as under:-

11. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act, 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By the Benami Transactions (Prohibition) Amendment Act, 2016, Section 3(2) of the Benami Transactions (Prohibition) Act, 1988, the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available in the present case. The aforesaid cannot be accepted. As held by this Court in Binapani Paul [Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100] the Benami Transactions (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the plaintiff has miserably failed to discharge his onus to prove that the sale deeds executed in favour of Defendant 1 were benami transactions and the same properties were purchased in the name of Defendant 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties.

33. The Apex Court in the case of Marcel Martins vs. M.Printer and others (2012)5 SCC 342, while discussing Section 4 of the Benami Transactions(Prohibition) Act,1988 held as under:-

26. Section 4 of the Act, upon which heavy reliance was placed by Mr Chaudhary, may be extracted in extenso:

4.Prohibition of the right to recover property held benami.(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply

(a) where the person in whose name the property is held is a coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property.

27. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet the suit out of which this appeal arises had been filed after the year 1988. The prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. In other words unless the conditions contained in Sections 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the suit filed by the plaintiff-respondents herein would fall within the mischief of Section 4.

28. The critical question then is whether sub-section (3) of Section 4 saves a transaction like the one with which we are concerned.

29. Sub-section (3) to Section 4 extracted above is in two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu Undivided Family for the benefit of such coparceners in the family. There is no dispute that the said provision has no application in the instant case nor was any reliance placed upon the same by the learned counsel for the respondent-plaintiffs.

30. What was invoked by Mr Naveen R. Nath, learned counsel appearing for the respondents was Section 4(3)(b) of the Act which too is in two parts viz. one that deals with the trustees and the beneficiaries thereof and the other that deals with the persons standing in a fiduciary capacity and those towards whom he stands in such capacity. It was argued by Mr Nath that the circumstances in which the purchase in question was made in the name of the appellant assumes great importance while determining whether the appellant in whose name the property was acquired stood in a fiduciary capacity towards the respondent-plaintiffs.

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37. We may at this stage refer to a recent decision of this Court in CBSE v. Aditya Bandopadhyay [(2011) 8 SCC 497] , wherein Raveendran, J. speaking for the Court in that case explained the terms □fiduciary□ and □fiduciary relationship□ in the following words : (SCC pp. 524-25, para 39)

39. The term fiduciary refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term □fiduciary relationship□ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a

person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.

It is manifest that while the expression □fiduciary capacity□ may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-□-vis the respondent-plaintiffs.

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44. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-□-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under sub-section (3)(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant. The view taken by the High Court to that effect is affirmed though for slightly different reasons.

(emphasis supplied)

34. The Apex Court in the case of Shaifali Gupta vs. Vidya Devi Gupta and others 2025 SCC OnLine SC 1181 held as under:-

23. Section 4 of the Benami Act bars the suit, claim or action in respect of a property held benami by person at the behest of the person claiming to be its true owner. It reads as under:

4(1). No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

24. The above provision bars an action in respect of □property held benami. However, whether the property in respect of which the suit, claim or action has been brought about is a benami property or not, is the issue of prime consideration.

25. The plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have

been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business. The properties are not described as benami in the name of any member of the family. Therefore, from the plaint reading, the suit properties cannot ex-facie be held to be benami properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act.

26. The Benami Act further defines benami property and benami transaction under Sections 2(8) and 2(9) of the said Act. Benami property is the property which is the subject matter of benami transaction whereas benami transaction is a property held by a person in respect whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person.

27. In such circumstances, whether a property is a benami, has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property if benami falls in the exception. It is only where the property is benami and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is benami and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be benami.

28. In Pawan Kumar v. Babu Lal (2019) 4 SCC 367, a similar issue arose before this Court in a matter concerning rejection of plaint under Order 7 Rule 11 (d) CPC. This Court held that for rejecting a plaint, the test is whether from the statement made in the plaint it appears without doubt or dispute that the suit is barred by any statutory provision. Where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order 7 Rule 11 CPC.

29. The ratio of the above case squarely applies to the facts of the case at hand. Accordingly, in our opinion, the courts below have not committed any error of law in rejecting the application under Order 7 Rule 11 CPC on the above score.

(emphasis supplied)

35. From the above law laid down by the Apex Court in the case of Pushpalata (supra), Mangathai Ammal (supra), Marcel Martins (supra) and Shaifali Gupta(supra) dealing with the Benami Transactions (Prohibition)Act,1988 before its amendment in the year 2016, and after its amendment, it is apparent that a person can purchase property, whether movable or immovable, in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. It is also clear that the bar enacted by Section 4(1) of the Act, is not applicable where the property is held by a person who is the coparcener in Hindu undivided family and the property is held for the benefit of the coparcener in the family. It is also not applicable when the

person in whose name property is held is a trustee or stands in a fiduciary capacity for the benefit of the person towards whom he stands in such capacity.

36. It is also apparent that the husband can file a suit claiming himself to be the true owner of the property by alleging that his wife is only the benami owner. The husband can prove the above fact by leading evidence or cumulatively through circumstances. It is also clear that the burden of proof lies upon the husband to prove that the property is benami. Of course, the wife can rebut the above presumption, by proving that the alleged property was not benami and she purchased it from her own funds.

37. It is also apparent that whether the matter falls within the purview of exception under Section 4(3) of the Act of 1988 or not, is an aspect which is to be gone into on the strength of the evidence on record. Only on the basis of the plaint averments, it cannot be decided that the plaintiff 's suit is barred under Section 4(1) of the Act.

38. The Apex Court in the case of Pawan Kumar vs. Babulal(Since deceased through Lrs.) & Others (2019) 4 SCC 367 has held that the plea of benami cannot be decided at the stage when the application under Order 7 Rule 11 CPC is taken up for consideration because the matter required fuller and final consideration after the evidence was led by the parties. It was held that where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact, which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order 7 Rule 11 CPC.

39. It is also evident that whether the plaintiff should have claimed cancellation of the allotment dated 6.6.2003 in favour of the defendant by Noida or not, will depend upon whether the plaintiff is the real owner of the disputed property or not. At the stage of considering an application under Order 7 Rule 11 CPC, the plaintiff 's suit cannot be rejected on this ground.

40. From the above discussion, it is apparent that the trial court has committed material illegality in allowing the defendants application under Order 7 Rule 11 CPC. The impugned order is perverse and is liable to be set aside. Consequently, the appeal has merit and is liable to be allowed.

41. Accordingly, this appeal is hereby allowed. The impugned judgment and decree dated 4.5.2022 of the trial court in O.S. no. 465 of 2017 is set aside. The defendants application under Order 7 Rule 11 CPC stands dismissed. The O.S. no. 465 of 2017 is restored to its original number.

42. The trial court is directed to decide the suit within six months, from the date of receipt of certified copy of this order, without granting unnecessary adjournment to any party.

43. However in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

44. Interim order, if any, stands vacated.

45. Office is directed to send back the original trial court record, forthwith.

(2025) 9 ILRA 964
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 743 of 2024

Khubi Ram ...Appellant
Versus
Bhoop Singh & Ors. ...Respondents

Counsel for the Appellant:
Sri Prathamesh Upadhyay, Tarun Agarwal

Counsel for the Respondents:
Gurja Shanker Mishra, Pratiksha Rai

Issue for Consideration

Issue pertains to whether the trial court was justified in dismissing the plaintiff's suit for declaration of ownership based on registered Will dated 20.01.2011, on the ground that Will was not proved in accordance with ss. 68 and 69 of Evidence Act, 1872, and whether plaintiff, having failed to examine any attesting witness or establish legal proof of execution, could validly claim ownership of disputed property.

Headnotes

Indian Evidence Act, 1872 - ss. 68, 69 - Plaintiff - appellant, instituted Original Suit No. 446 of 2020 before Court of Additional District Judge, Court No. 9, Ghaziabad, seeking declaration of ownership over house No. 85-A, Nagar Nigam No. 27, situated in Anand Vihar Colony, Ghaziabad, on the basis of registered Will dated 20.01.2011, allegedly executed by his father, in his favour - It was averred that appellant's father, being absolute owner of said property purchased through a sale deed dated 20.04.1977, executed Will voluntarily and in sound mental health, and upon his death on 16.12.2011, plaintiff became the sole owner - Defendants, who are his real brothers, allegedly refused to acknowledge his ownership, compelling him to seek declaratory relief - Defendants were proceeded ex parte, and trial court, by judgment and decree dated 25.01.2024, dismissed the suit, holding that plaintiff failed to prove the Will in accordance with ss. 68 and 69 of Evidence Act, 1872, as he neither produced original Will nor examined any attesting witness - Aggrieved thereby, plaintiff preferred instant First Appeal challenging the finding of trial court, contending that Will being registered carried a presumption of authenticity and did not require further proof.

Held: Plaintiff's claim of ownership of disputed property rests on registered Will dated 20.01.2011, purportedly executed by his father - However, he produced only a certified copy in trial court without explaining the non-production of original - As the law requires proof of original Will and permits secondary evidence only upon showing that the original is lost, destroyed, or not in his possession - Plaintiff's failure to lay such foundation renders certified copy inadmissible - Consequently, alleged Will was not proved - There are two attesting witnesses of alleged Will, but plaintiff has not examined any of them in trial court in order to prove execution of Will - Plaintiff has averred in trial court that attesting witness Ishwar Dayal has died and has also disclosed that other attesting witnesses Smt. Neema Singh does not want to give evidence in support of plaintiff in court since she is the wife of defendant No.4 - It is evident that one of attesting witness Smt. Neema Singh is alive, but she has not being examined, or she is not willing to appear in court, as such, Will has not been proved in accordance with Section 68 of Evidence Act - Since, one attesting witness of alleged Will is alive, provisions of Section 69 of Evidence Act are not applicable - As such, alleged Will cannot be read in evidence and thus, plaintiff cannot be declared owner of disputed property - Parties are real brothers disputing their father's property - As plaintiff failed to establish title on the basis of alleged Will dated 20.01.2011, trial court rightly dismissed suit ex parte - No ground is made out for appellate interference - Appeal

lacks merit and dismissed. [Paras 10, 14, 15] (E-13)

Case Law Cited

Ramesh Chand(D) Through LRS. v. Suresh Chand & Another, **2025 SCC OnLine SC 1879 - referred to**

List of Acts

Indian Evidence Act, 1872

List of Keywords

First Appeal u/s 96 CPC; Ex parte impugned judgment and decree; Plaintiff's suit for relief of declaration; Registered Will dated 20.01.2011; Owner of disputed property; Burden was on plaintiff to prove Will; Attesting witness of the Will; Execution of Will; Ss. 68, 69 of Evidence Act; Secondary evidence; Certified copy of Will; Original Will not produced; Foundation for secondary evidence; Proof of execution; Alive and capable of giving evidence; Not proved in accordance with Section 68; Cannot be read in evidence; No illegality committed by trial court; Appeal is devoid of merits; Impugned judgment and decree affirmed.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 743 of 2024

From the Judgment and Decree dated 25.01.2024 passed by the Court of Additional District Judge, Court No.9, Ghaziabad in O.S. No.446 of 2020

Appearances for Parties

Advs. for the Appellant:

Prathamesh Upadhyay, Tarun Agrawal

Adv. for the Respondent:

Girja Shanker Mishra, Pratiksha Rai

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

1. I have already heard Sri Tarun Agrawal learned counsel for the appellant and Ms. Pratiksha Rai learned counsel for the respondent on 19.09.2025. The case was fixed for today for exploring the possibility of compromise between the parties but the parties have failed to arrive at a compromise, as such, the matter is being disposed today, on merits.

2. The instant appeal under Section 96 CPC has been filed by the plaintiff against the exparte impugned judgment and decree dated 25.01.2024 in O.S. No.446 of 2020 (Khubi Ram Vs. Bhoop Singh & others), passed by the court of Additional District Judge, Court No.9, Ghaziabad, whereby the plaintiff's suit for the relief of declaration of being the owner of disputed property, on the basis of the registered Will dated 20.01.2011, has been dismissed on the ground that the Will has not been proved in accordance with law.

3. Factual matrix of the case is that the plaintiff filed O.S. No.446 of 2020, in the trial court against the defendants-respondents with the averments that the plaintiff and the defendants are the real brothers who are the successor of Ram Swaroop, who had purchased the disputed property house No.85-A, Nagar Nigam, No.27, a single storeyed house, constructed on area of 131.25 square yard consisting of two rooms, latrine, bathroom, tin shed, situated in Anand Vihar colony, village Nasarpur, Pargana Loni, Tehsil & District Ghaziabad, the boundaries of which have been mentioned at the end of the plaint, through sale deed dated 20.04.1977. The plaintiff submitted that due to his care and nursing, his father Ram Swaroop, who is also the father of the defendants, executed a registered Will dated 20.01.2011, in his favour, which was registered in book No.3, Zild No.471, at page Nos.269-280, serial No.26 in the office of the Sub Registrar, Ist, Ghaziabad. The Will was executed by Ram Swaroop willingly when he was in fit mental condition without any coercion and undue influence. The plaintiff further averred that this was the last Will of his

father and the defendants were aware of that Will. After the execution of the Will, the plaintiff's father Ram Swaroop died on 16.12.2011 in Sarvodaya Hospital, Kavi Nagar, Ghaziabad and, as such, after the demise of his father, he became the owner of the disputed property on the basis of the above registered Will. The plaintiff averred that the intention of the defendants had become malafide who refused to accept his ownership on the basis of the above Will, as such, he had no other option, but to seek declaration of his ownership on the basis of the above Will. In this background, the plaintiff claimed the following relief:-

(i) By declaratory decree granted in favour of the plaintiff against the defendants, the plaintiff be declared the owner of the disputed property, which is house No.85-A, Nagar Nigam No.27, a single storeyed house, constructed in an area of 131.25 square yard, consisting of two rooms, latrine, bathroom, tin shed, situated in Anand Vihar colony, village Nasarpur, Pargana Loni, Tehsil & District Ghaziabad.

4. The trial court presumed sufficient service on the defendants vide order dated 13.09.2021 and when the defendants did not appear before the trial court, by order dated 26.10.2021, the trial court proceeded exparte against the defendants.

5. In the documentary evidence, the plaintiff submitted a certified copy of the alleged Will dated 20.01.2011, photo copy of his Aadhaar Card, photocopy of death certificate of his father Ram Swaroop. In oral evidence, the plaintiff filed his affidavit in evidence, in which he reiterated his plaint averments.

6. The trial court by impugned judgment and decree dated 25.01.2024, concluded that the burden was on the plaintiff to prove that a registered Will was executed on 20.01.2011, in his favour by his father Ram Swaroop, but the plaintiff failed to discharge that burden. The plaintiff did not comply with the provisions of Section 68 of the Evidence Act. The plaintiff neither examined any attesting witness of the Will nor proved it in accordance with law. The trial court concluded that since the plaintiff failed to prove the execution of the Will in his favour, as such, the plaintiff cannot be deemed to be the owner of the disputed property on the basis of the above Will. With this reasoning, the trial court dismissed the plaintiff's suit exparte. Aggrieved against which, the plaintiff is in appeal before this Court.

7. Learned counsel for the plaintiff-appellant submitted that the impugned judgment and decree of the trial court is perverse and is liable to be set aside. He further submitted that the suit was decided exparte against the defendants. The plaintiff filed a certified copy of the Will which was proved by the oral evidence of the plaintiff, as such, there was no requirement to comply with the provisions of Section 68 & 69 of the Evidence Act. He further submitted that the Will had not been challenged by the defendants, as such, it should have been relied by the trial court. Learned counsel for the appellant further submitted that the Will was registered as such, there was a presumption regarding its authenticity but the trial court has overlooked this and has committed illegality in rejecting the plaintiff's suit. With these submissions, it was prayed that the appeal be allowed and consequently the plaintiff's suit be decreed.

8. Learned counsel for the defendant-respondents submitted that there was no

illegality in the impugned judgment of the trial court because the burden was on the plaintiff to prove the Will in accordance with law, in which the plaintiff utterly failed. She further submitted that prior to the execution of the Will, the father of the defendants had executed a sale deed in favour of the defendants, as such, no title has devolved on the plaintiff. She further submitted that the plaintiff has to prove its case on the basis of its pleadings and evidence submitted in the trial court, which the plaintiff failed to prove. With these submissions, it was prayed that the appeal has got no merit and is liable to be dismissed.

9. I have heard learned counsel for the parties and perused the record.

10. It is apparent that the plaintiff is claiming ownership of the disputed house on the basis of the registered Will dated 20.01.2011, alleged to be executed by his father Ram Swaroop in his favour. The plaintiff has not filed the original Will and has only filed its certified copy. The plaintiff has not furnished any reason as to why the original Will was not produced by him in the trial court. It is well settled that the plaintiff was bound to prove the original Will and if that was lost, destroyed or was not in his possession, only then the plaintiff could have filed the certified copy of the Will but that was not the case here. No foundation was laid by plaintiff for filing certified copy of the alleged Will, in secondary evidence. In view of this, the plaintiff could not have proved the certified copy of the alleged Will.

11. Section 68 and 69 of the Evidence Act reads as under:-

Section 68. Proof of execution of document required by law to be attested -If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

69. Proof where no attesting witness found.-If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.

12. The Apex Court in the case of Ramesh Chand(D) Through LRS. vs. Suresh Chand & Another 2025 SCC OnLine SC 1879 has held as under:-

"27. Considering the aforementioned cases, it is clear that in order to rely upon a Will, the same has to be proved in accordance with law. A Will has to be attested by two witnesses, and either of the two attesting witnesses have to be examined by the propounder of the will. In the present matter, we have carefully perused the Trial Court's judgment. There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and

Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld. This is contrary to law. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will. Mere fact that the Will was registered will not grant validity to the document. Besides that, the will propounded by plaintiff is surrounded with suspicious circumstances, in as much as the alleged propounder of the Will, Lt. Sh. Kundan Lal, had four children, including the plaintiff and the defendant No. 1. There is not even a whisper of reasoning as to why the propounder of the Will choose to exclude other three children from the bequest, and whether any other properties or assets were given to them. It is highly unlikely that a father would grant his entire property to one of his children, at the cost of three others, without there being any evidence of estrangement between the father and the children. This suspicious circumstance surrounding the will has not been removed by the plaintiff either. Hence, for these cumulative reasons, the Will propounded by plaintiff though registered would not confer any valid title on the plaintiff either."

13. It is apparent that if a document is required by law to be attested then it shall not be used as evidence until one attesting witness has been examined before the Court for proving its execution if he is alive and capable of giving evidence. It is also evident that where no attesting witness can be found, then the propounder of the Will is bound to prove the handwriting of at least one attesting witness and the signature of the person executing the document.

14. In this case, there are two attesting witnesses of the alleged Will, namely Ishwar Dayal and Smt. Neema Singh, but the plaintiff has not examined any of them in the trial court in order to prove the execution of the Will. The plaintiff has averred in the trial court that attesting witness Ishwar Dayal has died and has also disclosed that the other attesting witnesses Smt. Neema Singh does not want to give evidence in support of the plaintiff in court since she is the wife of the defendant No.4 Satyapal Singh.

15. It is evident that one of the attesting witness Smt. Neema Singh is alive, but she has not being examined, or she is not willing to appear in the court, as such, the Will has not been proved in accordance with Section 68 of the Evidence Act. Since, one attesting witness of the alleged Will is alive, the provisions of Section 69 of the Evidence Act are not applicable in the instant case. As such, the alleged Will cannot be read in evidence and on it's basis, the plaintiff cannot be declared the owner of the disputed property.

16. It is apparent that the plaintiff and the defendants are the real brothers who are fighting for the property of their father Ram Swaroop. It is apparent that the plaintiff has failed to prove his ownership in the disputed property on the basis of the alleged Will dated 20.01.2011, as such, the trial court has not committed any illegality in rejecting the plaintiff's suit exparte by impugned judgment and decree dated 25.01.2024, warranting

interference from this Court in exercise of its appellate jurisdiction. The appeal is devoid of merits and is liable to be dismissed.

17. Accordingly, the appeal is hereby dismissed.

18. The impugned judgment and decree of the trial court dated 25.01.2024 in O.S. No.446 of 2020 (Khubi Ram Vs. Bhoop Singh & others) is hereby affirmed.

19. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

20. Office is directed to prepare the decree accordingly.

21. Office is directed to send back the original trial court record, forthwith.

(2025) 9 ILRA 969
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 788 of 2025

Karamveer Electronic Ltd. ...Appellant
Versus
Energo Import, Ahmedabad & Ors. ...Respondents

Counsel for the Appellant:
Sri Surya Shanker Pandey

Counsel for the Respondents:

Issue for Consideration

Matter pertains to whether the trial court was justified in allowing defendant's application under O. VII R. 11 C.P.C. and returning plaint for presentation before Commercial Court on the ground that dispute arose out of commercial transaction falling within ambit of Section 2(1)(c) read with Section 6 of Commercial Courts Act, 2015, or whether civil court retained jurisdiction to entertain the suit for mandatory injunction directing defendants to honour Letter of Credit issued in connection with international trade transaction.

Headnotes

Code of Civil Procedure, 1908 - O. 7 R. 11 - Commercial Courts Act, 2015 - ss. 2(1)(c), 6 - The plaintiff - appellant, a company engaged in the manufacture of transformers and allied electrical equipment, entered into agreement dated 31.03.2020 with defendant no.1, Energo Import, a Government of Cuba undertaking, for supply of transformers to Cuba, with payment secured through Letter of Credit issued by defendant no.3, CAIXA Bank, on behalf of defendant no.1, and payable through State Bank of India, defendants nos.4 and 5 - Plaintiff supplied goods vide invoices between November 2020 and November 2021, amounting to Euro 940081.88, of which only Euro 303121.71 was received, leaving a balance of Euro 636960.57 unpaid despite repeated reminders - Alleging failure of defendants to honour the L.O.C. and breach of international banking obligations, plaintiff instituted Original Suit seeking a mandatory injunction directing defendants nos.1 to 3 to honour L.O.C. and for attachment of their funds in State Bank of India - Defendant no.3 moved application under O. VII R. 11(d) C.P.C., contending that dispute was commercial dispute of specified value u/ss. 2(1)(c) and 6 of Commercial Courts Act, 2015, and thus triable only by Commercial Court - Trial court upheld this objection, returned plaint for presentation before competent Commercial Court and plaintiff, aggrieved, preferred the instant First Appeal u/s 96 C.P.C. before High Court.

Held: It is apparent from plaint that there was export of merchandise by plaintiff, which was only partly paid by defendant No.1, the payment was secured by LOC issued by defendant No.2 & 3, who were bankers of defendant No.1 and

plaintiff has filed suits for obtaining balance payment of Euro 636960.57, by decree of mandatory injunction - In view of this, whole dispute is a commercial dispute falling within definition of Section 2(1)(c) of Commercial Courts Act, 2015 - Paintiff has claimed payment of about Rs.62 lacs from defendant no.1 to 3, which is above specified value of Rs.3 lacs defined in Section 2 (1) (i) of Commercial Courts Act, 2015, as such, civil court had no jurisdiction to entertain the suit - As per Section 6, where there is a commercial dispute of a specified value, such a suit is cognizable only by Commercial Court, and civil court lacked jurisdiction - Thus, trial court has not committed any illegality in allowing defendant no.3's application under O. 7 R. 11 C.P.C. and returning the plaint for presentation to proper court of jurisdiction – Hence, appeal is meritless and dismissed. [Paras 23 to 26] (E-13)

Case Law Cited

Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and another, **(2020) 15 SCC 58 - referred to**

List of Acts

Code of Civil Procedure, 1908; Commercial Courts Act, 2015

List of Keywords

First Appeal u/s 96 C.P.C.; Application under O. 7 R. 11 C.P.C.; Returned the plaint for presentation to proper court; Commercial transaction; Commercial dispute; Section 2(1)(c), 6 of Commercial Courts Act, 2015; Specified value; Jurisdiction of civil court; Bar of jurisdiction; Relief of mandatory injunction; Civil court had jurisdiction; Alternative forum; Erroneous order of trial court; Letter of Credit (L.O.C.); Export of merchandise; Payment of consideration; Obligation under international banking laws and usages; Reimbursement through internal arrangement; Supply of goods; Balance payment due; Cognizable by Commercial Court; Civil court lacked jurisdiction; No illegality committed by trial court; Appeal is meritless and dismissed.

Case Arising From

ORIGINAL JURISDICTION: First Appal No. - 788 of 2025

From Judgment and Decree dated 08.07.2025 passed by the Court of Additional Civil Judge (Senior Division), Court No.10, Meerut in Original Suit No.1310 of 2024

Appearances for Parties

Advs. for the Applicant:

Surya Shanker Pandey

Advs. for the Opposite Party:

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

1. Heard Shri Surya Shanker Pandey, learned counsel for the appellant.

2. The instant appeal under Section 96 C.P.C. has been filed by the plaintiff-appellant against the impugned judgment and decree dated 08.07.2025 passed by the Court of Additional Civil Judge (Senior Division), Court No.10, Meerut in Original Suit No.1310 of 2024 (Karamveer Electronics Ltd. vs. Energo Import and others), whereby the application under Order 7 Rule 11 C.P.C. of the defendant no.3, CAIXA Bank, has been allowed, and the trial court has returned the plaint for presentation to the proper court by concluding that the suit is relating to commercial transactions between the parties, which is cognizable by the Commercial Court.

3. Learned counsel for the plaintiff-appellant submitted that the order of trial court is erroneous, since the plaintiff filed a suit for relief of mandatory injunction, which is cognizable by the civil court.

4. Learned counsel submitted that the civil court had the jurisdiction to grant the relief sought by the plaintiff, as such, the trial court erred in returning the plaint for presentation to the proper court.

5. With these submissions, it was prayed that the appeal be admitted for hearing and, thereafter, be decided on merits, in accordance with law.

6. The plaintiff-appellant has annexed the copy of the plaint, which discloses that the plaintiff-company is engaged in manufacturing of transformers and allied equipments in the factory at Meerut, the defendant no.1 is a Govt. of Cuba Undertaking Company created by Resolution of Ministry of Foreign Trade by Resolution No.117 dated 01.12.1977 and is authorized to deal with import of transformers for Cuba.

7. It is the plaintiff?s case that the defendant no.2 is the authorized Banker of defendant no.1, who had issued Letter of Credit (LOC) on behalf of defendant no.1 for purchase of goods from plaintiff and the LOCs were to be reimbursed by defendant no.3 by an internal arrangement between defendant nos. 1 to 3.

8. It was further averred by the plaintiff that he was to receive payment of goods supplied by it to defendant no.1 through defendant no. 4 and 5, which are the State Bank of India, Partapur and its Branch situated at Ganga Plaza, Meerut.

9. The plaintiff further averred that he entered into an agreement with defendant no.1 for supply of different types of transformers on 31.03.2020 and it was decided that the plaintiff shall be paid for supply of above transformers by L.O.C. of the Bank i.e. defendant no.3, payable at State Bank of India, Partapur.

10. It was further averred by the plaintiff that vide its Invoices dated 29.11.2020, 12.12.2020, 13.10.2021, 12.11.2021, dispatched the goods to Cuba for defendant no.1 by Ship Consignment, Invoices and Bill of loading etc. and the goods were delivered to defendant no.1 and as agreed previously, defendant no.3 issued L.O.C. and payment advice from defendant no.2 for Euro 940081.88, which is equivalent to Rs.9,11,87,942.36 paise for payment and out of the above amount, Euro 303121.71 was paid by defendant no.3 to plaintiff through State Bank of India, Partapur.

11. It was further averred by the plaintiff that subsequently no payment whatsoever was made to it in spite of repeated reminders and messages. The plaintiff further averred that under the aforesaid circumstances, as per the International Banking Laws, customs and usages, the defendant no. 2 and 3 were under an obligation to fulfil the commitment made by them to defendant no.1, inter alia to the Government of Cuba, but they have miserably failed and have not only caused irreparable loss to the plaintiff but also have caused loss to Indian Economy/Government by holding over the Foreign Exchange, which was to come to India by this deal.

12. It is the case of the plaintiff that for the goods supplied by it to defendant no.1, the Bankers of defendant no.1 i.e. defendant no.2 and 3 have failed to make payment in terms of the above LOC and an amount of Euro 636960.57 is due. The plaintiff claimed the following reliefs:-

"(A) That by a decree of mandatory injunction, commanding the defendant nos. 1 to 3 to honour the LOC No. B1CC120000000521 for Balance of EURO 636960.57 equivalent to INR 61,78,120/- the LOC was issued for EURO

94008108 out of which EURO 303121 was paid in favour of plaintiff through defendant no. 4.

(B) That by decree of the court, the court be pleased to attach the amount of defendant no. 2 lying in CBS Branch of State Bank of India, being account no._____in Foreign Exchange, Ganga Plaza Branch of State bank of India at Meerut."

13. The defendant no.3, CAIXA Bank moved an application under Order 7 Rule 11 C.P.C. in the trial court, that from the averments of the plaint, it is apparent that there is a commercial dispute between the parties, therefore, the jurisdiction would lie with the appropriate Commercial Court. It was further submitted that the dispute is of commercial nature in terms of Section 2(1)(c) of the Commercial Courts Act, 2015, and hence the present suit lies before the appropriate Commercial Court and in view of Section 6 of the Commercial Courts Act, 2015, its jurisdiction was barred.

14. The plaintiff-appellant submitted his objections in the trial court, in which, it was submitted that the Commercial Courts Act, 2015 only provided an alternative forum to decide suits, but it does not either bar or ousts the jurisdiction of civil court to try civil suits of the nature.

15. It was further averred that Section 11 of the Commercial Courts Act, 2015, specifically says that those suits of which civil court cannot take cognizance shall also be not entertained by Commercial Courts.

16. It was further averred that the present suit was for the relief of injunction, which was cognizable by civil court and was not barred.

17. The trial court by impugned judgment and decree dated 08.07.2025 has allowed the defendant no.3?s application under Order 7 Rule 11 C.P.C. by concluding that the dispute raised by the plaintiff is a commercial dispute, which falls within the definition of Section 2(c) of the Commercial Courts Act, 2015 and according to Section 6 of that Act, in all such cases, where the jurisdiction vests with the Commercial Court, the ordinary jurisdiction of the civil court was barred.

18. I have heard the learned counsel for the plaintiff-appellant and perused the record.

19. Section 2 (1) (c) of the Commercial Courts Act, 2015, reads as follows:

"(c) "commercial dispute" means a dispute arising out of?-

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

*** *** ***

Explanation.- A commercial dispute shall not cease to be a commercial dispute merely because---

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;"

20. Section 6 of the Commercial Courts Act, 2015, reads as follows:

Section6: Jurisdiction of Commercial Court-*The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.*

Explanation.-- For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdictiothatn, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

21. From the perusal of the plaint, it is apparent that the plaintiff had supplied transformers to defendant no.1 and for securing its payment a Letter of Credit(LOC) of Euro 940081.88 was opened in favour of the plaintiff by defendant no.3, but since the whole payment of goods supplied by the plaintiff was not made and payment of Euro 636960.57 was outstanding against defendant no.1, as such, the plaintiff filed the instant suit for mandatory injunction for directing the Banker of defendant no.1 i.e. defendant no.2 and 3 to honour the above Letter of Credit(LOC).

22. The Apex Court in the case of ***Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and another (2020) 15 SCC 585,*** has held that 'a matter will fall under the jurisdiction of the Commercial Court or the Commercial Division of the High Court on the following factors:-

(i) it shall be a commercial dispute within the meaning of Section 2(1)(c) of the Act; and

(ii) such commercial disputes are of a specified value as per Section 2(1)(i) of the Act.'

23. It is apparent from the plaint that there was export of merchandise by the plaintiff, which was only partly paid by defendant No.1, the payment was secured by LOC issued by defendant No.2&3, who were the bankers of defendant No.1 and the plaintiff has filed the suits for obtaining the balance payment of Euro 636960.57, by decree of mandatory injunction. In view of this, the whole dispute is a commercial dispute falling within the definition of Section 2(1)(c) of the Commercial Courts Act, 2015. The plaintiff has claimed payment of about Rs.62 lacs from the defendant no.1 to 3, which is above the specified value of Rs.3 lacs defined in Section 2 (1) (i) of the Commercial Courts Act, 2015, as such, the civil court had no jurisdiction to entertain the suit.

24. It is also apparent that, as per Section 6, where there is a commercial

dispute of a specified value, such a suit is cognizable only by the Commercial Court, and the civil court lacked jurisdiction.

25. In view of the above facts, the trial court has not committed any illegality in allowing the defendant no.3?s application under Order 7 Rule 11 C.P.C. and returning the plaint for presentation to the proper court of jurisdiction.

26. Accordingly, the instant appeal is meritless and is ***dismissed*** under Order 41 Rule 11 C.P.C. at the admission stage.

27. The impugned judgment and decree dated 08.07.2025 is affirmed.

(2025) 9 ILRA 974
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.09.2025

BEFORE

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

Writ Tax No. 4630 of 2025

M/s Soraza Recycling Pvt. Ltd.
...Revisionist
Versus
U.O.I. & Ors. ...Opp. Parties

Counsel for the Revisionist:
Nishant Mishra, Vedika Nath

Counsel for the Opp. Parties:
A.S.G.I., Dhananjay Awasthi, Krishna Agarawal, Kishna Mohan Asthana, Maneesh Mehrotra, Saumitra Singh

Issue for Consideration

Matter pertains to the provisional attachment carried out by the revenue with regard to two bank accounts of the petitioner under S. 83 of the Central Goods and Services Tax Act, 2017 and the blocking of the electronic credit ledger, purportedly on the ground that proceedings have been launched under S. 74 of the Act.

Headnotes

Central Goods and Services Tax Act, 2017 - S. 83 - Provisional attachment - Draconian power - Formation of opinion - Requirement of tangible material - Absence of reasons - Attachment liable to be quashed - S. 74 - No proceedings actually initiated - Incorrect recital in attachment order - There is not a whisper of any specific requirement or ground - Attachment wholly arbitrary - Blocking of Electronic Credit Ledger - Requirement of consideration of reply - Personal hearing - Reasoned order to be passed.

Held:

Absence of Valid Reasons: We are of the view that there is no reason provided for the provisional attachment notice and the alleged supportive reason that has been provided is a completely ludicrous one - There is not a whisper of any specific requirement or ground at the present stage or formation of any reasoned opinion for provisionally attaching the said bank accounts.

Quashing of Orders: We, accordingly, quash and set-aside the provisional attachment notices dated July 23, 2025 with a direction upon the authority concerned to have the same released within a period of 48 hours from date.

Electronic Credit Ledger: With regard to blocking of the electronic credit ledger, the authorities are directed to look into the reply of the petitioner, grant a personal hearing, and thereafter, pass a reasoned order in accordance with law. The entire process should be completed within a period of two weeks from date. (Paras 7,8,9,11,12,13) (E-7)

Case Law Cited

Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771; CIT v. Kelvinator of India Ltd., (2010) 2 SCC 723; CIT v. Techspan (India) (P) Ltd., (2018) 6 SCC 685; R.D. Enterprises v. Union of India, 2024: AHC:149247-DB; Amazonite Steels Pvt. Ltd. v. Union of India, 2020 (36) G.S.T.L. 184 (Cal.).

List of Acts

Central Goods and Services Tax Act, 2017; Constitution of India

List of Keywords

Provisional Attachment; Draconian; Tangible Material; Opinion; Necessary So to Do; Protecting the Interest of the Government Revenue; Non-Est; Electronic Credit Ledger; Reasoned Order.

Case Arising From

ORIGINAL JURISDICTION:

Writ Tax No. 4630 of 2025, Ms Soraza Recycling Pvt. Ltd. v. Union of India & Ors., filed under Article 226 of the Constitution of India challenging orders of provisional attachment and ledger blocking.

Appearances for Parties

Advs. for the Petitioner / Revisionist:

Nishant Mishra
Vedika Nath

Advs. for the Opp. Parties / Respondents:

A.S.G.I.
Dhananjay Awasthi
Krishna Agarawal
Kishna Mohan Asthana
Maneesh Mehrotra
Saumitra Singh

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. Heard Mr. Nishant Mishra, learned counsel appearing on behalf of the petitioner, Mr. Krishna Agarawal, learned counsel appearing on behalf of the respondent Nos.2 & 3 and Mr. K.M. Asthana, learned counsel appearing on behalf of the respondent No.4.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the provisional attachment carried out by the revenue with regard to two bank accounts of the petitioner under Section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

3. The prayers made out in the writ petition are as follows:-

"A- Issue a writ, order or direction in the nature of certiorari quashing the impugned orders of provisional attachment in Form DRC-22 dated 23.07.2025 (Annexure-1 & 2) passed by respondent no. 2, provisionally attaching bank account No.120033996329 maintained with Canara Bank, Kotdwar Branch and bank account bearing No.25430200000000263 maintained with Indian Overseas Bank, Kotdwar Branch;

B- Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.07.2025 (Annexure-3) of respondent no. 3 blocking the electronic credit ledger of the petitioner to the tune of Rs.1,95,57,339/-;

C- Issue a writ, order or direction in the nature of mandamus commanding the respondents to forthwith allow operations of both bank accounts of the petitioner forthwith unblock the credit ledger of the petitioner;

..."

4. Mr. Nishant Mishra, learned counsel appearing on behalf of the petitioner submits that the reasons provided in the attachment notice are absolutely false and contrary to the facts. He submits that the reason for attachment has been stated to be that proceedings have been launched against the aforesaid taxable person under Section 74 of the Act. He further submits that till date, no show cause notice has been issued under Section 74 of the Act. He also submits that Section 83 of the Act, being a draconian provision wherein the bank accounts of the petitioner has been attached

resulting in complete halt in the business of the petitioner, is to be applied in rare instances and only after proper reasons for the same are provided by the authorities.

5. Per contra, Mr. Krishna Agarawala, learned counsel appearing on behalf of the revenue passes on the instructions and states that a search was carried out in the premises of the petitioner and the investigation against the petitioner is an ongoing process. He submits that Section 74 proceedings shall be initiated against the petitioner at the earliest. He, accordingly, supports the attachment order passed on July 23, 2025 stating that the authorities are of the view that the petitioner may alienate a sum of money that is lying in his bank accounts.

6. Upon hearing counsel appearing on behalf of the parties, we firstly place on record Section 83 of the Act which reads as follows:-

"83. Provisional attachment to protect revenue in certain cases. - *(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."

7. A plain reading of the above section reveals that the provisional attachment should only be carried out to protect the interest of the Government when the authorities find it necessary to do so, and such order of attachment is required to be in writing. The Supreme Court and this Court in catena of judgments have categorically held that the reasons provided in the attachment notice must be proper. Lack of reasons would result in quashing of the provisional attachment as a valuable right of the petitioner is threatened by the said provisional attachment.

8. Before proceeding further, one may have a brief look at the exposition of law on the subject matter at hand. The Supreme Court in **Radha Krishan Industries v. State of H.P. reported in (2021) 6 SCC 771** has categorically held that opinion for provisional attachment must be based on existence of some tangible material and should not be based on mere discretion of authorities. Furthermore, the Court has crystallised its findings and concluded in relation to formation of opinion for provisional attachment under Section 83 of the Act The relevant paragraphs of the judgment are quoted hereinbelow:

"49. Now in this backdrop, it becomes necessary to emphasise that before the Commissioner can levy a provisional attachment, there must be a formation of ?the opinion? and that it is necessary ?so to do? for the purpose of protecting the interest of the government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has

contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalisation of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory preconditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that ?for the purpose of protecting the interest of the government revenue, it is necessary so to do?, it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.

50. By utilising the expression ?it is necessary so to do? the legislature has evinced an intent that an attachment is authorised not merely because it is expedient to do so (or profitable or practicable for the Revenue to do so) but because it is necessary to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the Revenue can be protected only by a provisional attachment without which the interest of the Revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallised. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules. The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an assessee can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorise Commissioners to make pre-emptive strikes on the property of the assessee, merely because property is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue.

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52. We adopt the test of the existence of ?tangible material?. In this context, reference may be made to the decision of this Court in CIT v. Kelvinator of India Ltd. [CIT v. Kelvinator of India Ltd., (2010) 2 SCC 723] S.H. Kapadia, J. (as the learned Chief Justice then was) while considering the expression ?reason to believe? in Section 147 of the Income Tax Act, 1961 that income chargeable to tax has escaped assessment inter alia by the omission or failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of ?tangible material? and that ?reasons must have a live link with the formation of the belief?. This principle was followed subsequently in a two-Judge Bench decision in CIT v. Techspan (India) (P) Ltd. [CIT v. Techspan (India) (P) Ltd., (2018) 6 SCC 685] While adverting to these decisions we have noticed that Section 83 of the Hpgst Act uses the expression ?opinion? as distinguished from ?reasons to believe?. However for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue.

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"76.4. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.

76.5. The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

76.6. The expression ?necessary so to do for protecting the government revenue? implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment. 76.7. The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue."

(Emphasis added)

9. This court in **R.D. Enterprises v. Union of India** reported in 2024:AHC:149247-DB penned by one of us has held that this provision being draconian in nature necessitates the formation of an opinion based on cogent reasons before exercising power for provisional attachment. The relevant paragraphs of the judgment are quoted hereinbelow:

'7. One may look into the judgment passed by the Calcutta High Court in the case of Amazonite Steels Pvt. Ltd. vs. Union of India reported in 2020

(36) G.S.T.L. 184 (Cal.), wherein the Court has held as follows:?

'Epilogue:

'A tax collector should collect taxes from a taxpayer just like a bee collects honey from a flower in an expert manner without disturbing its petals? - Kautilya in Arthashastra.

38. The new regime under the GST Act, 2017 is a new legislative creation by which the Union Government along with all the State Governments have streamlined various statutes under which tax was earlier collected to enhance the ease of doing business by preventing multi-point taxation that was extremely cumbersome and time consuming for the citizens of India. The raison d?etre of the GST Act, 2017 is to reduce the burden of tax and also to simplify the procedures. This, however, is coupled with certain far reaching and drastic measures that would be applicable on persons who evade the payment of such taxes. One need not stress the importance of the responsibility that comes upon the Government officials who take such drastic measures upon the citizens of this country. Nonetheless, these drastic provisions come with a purpose, and that is to ensure collection of taxes so that the inequities in society may be reduced by the Government. Provisions such as provisional attachment are necessary to ensure that persons who intend to evade taxes and/or are a part of a mechanism to defraud the Government are nipped in the bud and appropriate taxes can be collected from such persons.'

8. We are of the view that the legislature never intended this provision to be read in a casual manner, as the provision for provisional attachment is a drastic measure that the Department takes even before assessing the liability of the petitioner. This provision is in the nature of preventive detention in criminal cases where one detains a person without any offence having been committed.

9. In light of the above, it becomes extremely necessary for the Department to justify the reasons for such a provisional attachment and without such justification being provided by the Department, by way of specific reasons, such provisional attachment would be illegal, arbitrary and non est in law. In the present facts and circumstances of the case, we do not find recording of any such reasons.'

10. In the backdrop of the abovementioned judgments, we delineate below one of the provisional attachment letters issued to the petitioner:-

"To, The Branch Manager,
Canara Bank,
L I S A Building, Najibabad Road,
P O Kotdwara-246149

Subject:- Provisional attachment of property under section 83 of the CGST Act, 2017.

It is to inform that M/s Soraza Recycling Private Limited (PAN No. ABICS3958D), Khasra No. 373, Village Ravali, Dhaulana, Hapur, Uttar Pradesh, 245301 bearing registration No. 09ABICSS3958D1Z1 is a registered taxpayer under the CGST Act 2017. Proceedings have been launched against the aforesaid taxable person under Section 74 of the CGST Act 2017 to determine the

tax or any other amount due from the said person. As per information available with the department, it has come to my notice that the said person has bank A/C No.120033996329.

In order to protect the interests of revenue and in exercise of powers conferred under section 83 of the Act, I, Jitendra Kumar, Commissioner of CGST, Noida hereby provisionally attach the aforesaid account/property and all other bank accounts associated with PAN No ABICS3958D.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

Further, the KYC documents and statement of abovesaid Bank Account No. since inception may also be provided for necessary action at this end.

Digitally signed by
Jitendra Kumar
23.07.2025
(Jitendra Kumar)
Commissioner."

11. Upon a perusal of the said letter, the only reason that emanates is that the present provisional attachments are required to be made as proceedings have been launched against the aforesaid taxable person under Section 74 of the Act. There is not a whisper of any specific requirement or ground at the present stage or formation of any reasoned opinion for provisionally attaching the said bank accounts. Secondly, as it appears from the facts, no proceedings have been initiated under Section 74 of the Act. In light of the same, we are of the view that there is no reason provided for the provisional attachment notice and the alleged supportive reason that has been provided is a completely ludicrous one. If the reason that provisional attachment is being done as proceedings have been initiated under Section 74 of the Act is allowed to stand, then in all proceedings wherein show cause notice is issued under Section 74, provisional attachment would become valid. The law as laid down in the abovementioned judgements makes it patently clear that a proper opinion has to be formed based on adequate reasons for such a draconian action to be taken. In the present case, such reasons are definitely lacking and the impugned order is absolutely perverse and arbitrary. In light of the same, both the provisional attachment notices are without any basis in law and are required to be quashed and set-aside. We, accordingly, quash and set-aside the provisional attachment notices dated July 23, 2025 with a direction upon the authority concerned to have the same released within a period of 48 hours from date. We make it clear that the order passed in Court today shall not in any way hinder the authorities from issuing a fresh notice under Section 83 of the Act in accordance with law.

12. With regard to blocking of the electronic credit ledger, the authorities are directed to look into the reply of the petitioner, grant a personal hearing, and thereafter, pass a reasoned order in accordance with law. The entire process of passing a reasoned order on the issue of blocking of the electronic credit ledger should be completed within a period of two weeks from date.

13. With the above directions, the writ petition is disposed of.

(2025) 9 ILRA 981
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.09.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE PRASHANT KUMAR, J.

Special Appeal No. 316 of 2025

Arun & Anr. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellants:
Prateek Tewari, Praveen Kumar Tewari

Counsel for the Respondents:
C.S.C., Shashank Shukla

Issue for Consideration
Permissibility to claim compassionate appointment on the basis of unregistered adoption deed.

Headnotes
Service law – Hindu Adoptions and Maintenance Act, 1956 – S. 16 – Registration Act, 1908 – S. 17 – Compassionate appointment – Claim was made on the basis of an adoption deed, which was denied on the ground that the adoption deed is not registered one – Validity challenged:
Held : A conjoint reading of the amended Section 16(2) of the Act, 1956 as applicable in the State of U.P. and Section 17 (1)(f) and (3) of the Act, 1908 as applicable in the State of U.P. makes it clear that after 01.01.1977, any adoption in the State of U.P. can take place only by way of a registered deed and not otherwise – As the alleged adoption deed is a notarized deed and not a registered deed in accordance with law, therefore, no benefit could accrue at least before a writ court in favour of the appellant. [Paras 7 and 8] (E-1)

Case Law Cited
Special Appeal no. 236 of 2014; Sanjay Kumar 3238 (S/S) of 2014 v. State of U.P. & Ors. decided on 05.05.2014 **– referred to.**

List of Acts
Hindu Adoptions and Maintenance Act, 1956 – S. 16; Registration Act, 1908 – S. 17 (amended vide S. 32 of Amendment Act, 1976); U.P. Civil Laws (Reforms and Amendments) Act, 1976

List of Keywords
Natural guardian; Adoption deed; Compassionate appointment; Presumption; Registered deed; Statutory requirement; Succession certificate; Notarized deed; Secondary evidence.

Case Arising From
Judgment and order dated 11.08.2025 passed in HABC Writ Petition No. 177 of 2025; Ayesha v. State of U.P. & Ors.

Appearances for Parties
Advs. for the Petitioners : Prateek Tewari, Praveen Kumar Tewari
Advs. for the Respondeents : C.S.C., Shashank Shukla

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Prashant Kumar, J.)

1. Heard.

2. This is a special appeal challenging an order dated 11.08.2025 passed by learned Single Judge in HABC writ petition bearing No.177/2025 [Ayesha through her mother Ragini and Anr. vs. State of U.P. & Ors.]. The petition was filed by respondent no.6 through her natural guardians and respondent nos.7 and 8. Learned Single Judge has allowed the claim of natural guardians i.e. opposite party no.s 7 and 8 to custody of opposite party no.6 and has rejected the stand of appellants herein on the ground that alleged adoption deed which is a notarized one is

not registered whereas the law requires it to be registered.

3. Learned counsel for the appellant has relied upon a judgment dated 05.05.2014 passed in special appeal no.236 of 2014 [Sanjay Kumar 3238 (S/S) of 2014 vs. State of U.P. & Ors.] to contend that in that case Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act, 1956') as applicable in the State of U.P. was considered and it was held that compassionate appointment could not have denied prima facie merely on the ground that adoption deed was not registered one. According to the Co-ordinate Bench, U.P. amendment provides that additional evidence under the Indian Evidence Act, 1872 shall be admissible to defend any unregistered adoption deed. This is the only argument advanced for challenging the judgment of learned Single Judge.

"16. Presumption as to registered documents relating to adoption- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

4. As per the above quoted Section 16 of the Act, 1956, if the adoption deed is registered then it raises a presumption about validity of the adoption. However, this provision was amended for its application in the State of U.P. by U.P. Civil Laws (Reforms and Amendments) Act, 1976 (hereinafter referred as 'the Amending Act of 1976'). The statement of objects and reasons (paragraph-5) for introducing the said Amending Act of 1976 discloses the intent and object for bringing about the amendment, interalia, in Section 16 of the Act, 1956 which reads as under:-

"5. A deed of adoption of a child, a sale deed of immovable property of the value below Rs. 100 and an agreement to sell immovable property, are not required compulsorily to be registered at present. Playing upon the element of chance involved in oral evidence, fictitious ante-dated deeds of such nature are set up with view to usurp the property of a rightful transferee of legatee, and on the other hand genuine transactions of these categories are challenged. Suitable amendments are proposed in the Transfer of Property Act, 1882, The Registration Act, 1908, and the Hindu Adoption and Maintenance Act 1956 to make compulsory the registration of the adoption deeds, all agreements to sell immovable property and all transfers of immovable property irrespective of the value or consideration."

5.Accordingly, Section 16 of the Act, 1956 was amended by Section 35 of the Amending Act of 1976 for its application in the State of U.P. in the following terms:-

"Uttar Pradesh- Renumber Section 16 as sub-section (1)thereof and after sub-section (1) as so renumbered, insert the following sub-section (2) namely:--

"(2) In case of an adoption made on or after the 1st day of January, 1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by

the person giving and the person taking the child in adoption, and registered under any law for the time being in force:

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872."

6. To facilitate the aforesaid, by Section 32 of the Amending Act of 1976, as was proposed in the objects and reasons, Section 17 of the Registration Act, 1908 (hereinafter referred to as 'the Act, 1908') was amended by inserting clause (f) to Section 17(1) of the Act, 1908 and interalia amending sub-Section (3) of Section 17 for its application in the State of U.P. Section 17 (1) containing clause (f) and sub-Section (3) of Section 17 read as under:-

"17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--,

.....

(f) any other instrument required by any law for the time being in force, to be registered,

(2).....

(3) Authorities to adopt a son, executed after the Ist day of January, 1872, and not conferred by a Will [and an instrument recording adoption of a child executed after the first day of January, 1977] shall also be registered"

7. A conjoint reading of the amended Section 16(2) of the Act, 1956 as applicable in the State of U.P. and Section 17 (1)(f) and (3) of the Act, 1908 as applicable in the State of U.P. makes it clear that after 01.01.1977, any adoption in the State of U.P. can take place only by way of a registered deed and not otherwise.

8. There is no exception to the aforesaid said statutory requirements. There is nothing in the provision whether under sub-Section (1) or sub-Section (2) as applicable in the State of U.P. of Section 16 of the Act, 1956 or the Act, 1908 which could lend itself to even a remote suggestion that an unregistered deed could be relied upon to claim adoption as is being claimed herein. The judgment relied by learned counsel for the appellant was rendered in a case of compassionate appointment where a succession certificate had already been issued to the appellant-petitioner and he had also been paid post-retiral dues. As regards the other observations, with respect, we have perused the provision itself and do not find any such stipulation therein. As the alleged adoption deed is a notarized deed and not a registered deed in accordance with law, therefore, no benefit could accrue at least before a writ court in favour of the appellant. The proviso to sub-Section (2) of Section 16 of the Act, 1956 as applicable in the State of U.P. merely provides that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872. Now, secondary evidence would be admissible only when the primary evidence existed but was not available for any reason. Here, it is not the case of the

appellants that there was an adoption deed duly registered which is not available, therefore, there is secondary evidence. The case of the appellants in the very first instance is that there was only a notarized adoption deed, therefore, the proviso also does not help the appellants.

9. The appeal lacks merits and it is accordingly, **dismissed.**

(2025) 9 ILRA 984
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 913 of 2022

Thakurdeen ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Adarsh Bhushan

Counsel for the Respondents:
Ms. Monika Arya, A.C..S.C.

Issue for Consideration

1. Legality of eleven orders awarding minor penalty viz. Censure, Adverse entry in Annual Confidential Report, Withholding of a day's salary etc.
2. Significance of principle of *Audi alteram partem* in the matter of imposing minor penalty.

Headnotes

(A) Service law – UP Government Servant (Discipline and Appeal) Rules, 1999 – Rule 3(i) and 7 – Minor penalty – Censure – Allegation of misconduct – *Audi alteram partem* – No opportunity of hearing was provided – Effect :

Held : The impugned order is bad, first, on the principle of violating the rule of *audi alteram partem*, and, also being one made in breach of Rule 3(i) of the Rules of 1999, governing imposition of minor penalties on government servants, serving the State Government of Uttar Pradesh. The impugned order dated 12.10.2018 is, therefore, fit to be quashed with liberty to the respondents to pass a fresh order, after affording opportunity of hearing to the petitioner, if they so desire. [Para 26]

(B) Service law – Award of adverse entry in Annual Confidential Report (ACR) – Charge of unauthorized absence – No opportunity of hearing was afforded – Effect :

Held : The law would entitle the petitioner to an opportunity of hearing before he is rated bad or poor in the ACR for the relevant year **–** The part of the adverse entry in the ACR, which by the first order, withholds the petitioner's integrity, and by the latter order, classes it as suspect, is the result of a perverse conclusion **–** The consequence would be that the impugned orders 16.03.2019, 19.07.2019 and 31.07.2020, insofar as these rate the employee as poor or bad in his ACR, would have to be quashed with liberty to the respondents to pass a fresh order, after granting reasonable opportunity of hearing to the petitioner. [Paras 32 and 36]

(C) Service law – Withholding of a day's salary – Imposing of a penalty, which was not provided under the law – Permissibility :

Held : It is trite law that a punishment, that can be awarded, is only one, which the Rules provide. The punishment, to be meted out to an employee by the employers for a defined misconduct, is not something for the employers' fancy or innovation. Only that punishment can be awarded, which the rules provide; not anything different **–** A perusal of Rule 3 of the Rules of 1999 would show, particularly the part relating to minor penalties, that there is no penalty envisaged there, which may authorize the respondents to withhold one day's salary for unauthorized absence of an employee **–** The impugned orders dated 01.04.2019 and 13.06.2019, imposing the punishment of withholding a day's salary, are manifestly illegal. [Paras 37 and 39] (E-1)

Case Law Cited

Vijay Singh v. State of U.P. and others, (2012) 5 SCC 242; R.L. Butail v. Union of India and others, 1970 (2) SCC 876; State of U.P. and others v. Madhav Prasad Sharma, (2011) 2 SCC 212 **– referred to.**

List of Acts

Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999; Uttar Pradesh Government Servant's Conduct Rules, 1956

List of Keywords

Penalty; Mala fide; Personal grudge; Adverse entry; Censure; Misconduct; Disciplinary action; Absent from duty; Annual Confidential Report (ACR); Withholding two increments; Withholding of a day's salary on two occasions; Minor penalty; Opportunity of hearing; Major penalty; Bad entry; Unauthorized absence; Moral turpitude; Mischief.

Case Arising From

Various orders, numbering a total of eleven, passed by Chief Engineer, Dept. of Irrigation against the petitioner.

Appearances for Parties

Advs. for the Petitioners : Adarsh Bhushan
Advs. for the Respondeents : Monika Arya, Addl. Chief Standing Counsel

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

1. The petitioner, a Senior Assistant with the Department of Irrigation, Water Works Division, Jhansi, has challenged a multitude of orders passed against him, numbering a total of eleven, by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P. and the Superintending Engineer, Water Works Division, Jhansi. Initially, when the petition was instituted, ten orders passed by the two respondents above named, dated 12.10.2018, 16.03.2019, 01.04.2019, 12.06.2019, 13.06.2019, 19.07.2019, 31.07.2020, 05.09.2020, 01.10.2021 and 18.03.2021, were impugned. Later on, by amendment, the petitioner added to the cart of the orders impugned, the order dated 17.01.2023 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P.

2. The petitioner was appointed as a Junior Assistant on 20.02.2009 with the Department of Irrigation, Water Works Division, Jhansi. He was promoted to the post of a Senior Assistant on 13.06.2016. The petitioner asserts that he is working to the satisfaction of the Department and its various officers. The petitioner asserts that the various orders passed against him are the result of mala fides and personal grudge harboured against him by Ram Pratap Yadav, Superintending Engineer, Water Works Division, Jhansi. It is further pleaded by the petitioner that he has been targeted by the Superintending Engineer aforesaid to gratify his ego. It is for this reason that Ram Pratap Yadav has been impleaded eo nomine as respondent No.5.

3. The petitioner says that while posted as a Senior Engineer with the Water Works Division, Jhansi, he was not allotted work earmarked for that position. Accordingly, the petitioner requested the Superintending Engineer aforesaid that he may be allotted work meant for the post that he occupies. The aforesaid request was refused by the Superintending Engineer vide orders dated 11.06.2018, 12.06.2018 and 13.06.2018. The Superintending Engineer passed further orders dated 20.06.2018 and 11.10.2018, saying that the petitioner had not signed the attendance register on 09.10.2018 and 10.10.2018, and, on that account, required the petitioner by the orders last mentioned to submit his explanation. On the day following the order dated 11.10.2018, seeking the petitioner's explanation, the Superintending Engineer passed the first of the orders impugned

dated 12.10.2018, awarding an adverse entry to the petitioner as a measure of penalty, without considering the petitioner's reply.

4. It is next pleaded that the Superintending Engineer, yet again, maliciously passed an order dated 15.11.2018, calling for the petitioner's explanation regarding his absence from duty on 15.11.2018. The petitioner submitted his explanation dated 16.11.2018, in response whereto a memo dated 03.12.2018 was issued by the Superintending Engineer, addressed to the petitioner, saying that the language, in which the petitioner's reply was couched, was objectionable, unparliamentary and based on falsehood. It was remarked that his integrity appeared doubtful. The petitioner was warned to be careful in future. This order is not under challenge.

5. The petitioner next says that the Superintending Engineer bears personal grudge against him and motivated by that, in the most arbitrary fashion, he issued show cause notices dated 12.02.2019, 06.03.2019 and 15.03.2019 to the petitioner, without any rhyme or reason, proposing disciplinary action against him on the ground of misconduct. On 16.03.2019, the Superintending Engineer carried out an inspection, where the petitioner along with two other employees were absent from duty. The Superintending Engineer passed an order on the same day i.e. 16.03.2019, withholding the petitioner's integrity under Rules 2 and 3 of the Uttar Pradesh Government Servant's Conduct Rules, 1956 (for short, 'the Rules of 1956') and awarded an adverse entry to him for the year 2018-19. The order dated 16.03.2019 is under challenge.

6. The Superintending Engineer further passed orders dated 30.03.2019 and 31.03.2019, saying that the petitioner was absent from duty for 10 hours 55 minutes. These orders are said to be highhanded and the product of malice and personal grudge, harboured by the Superintending Engineer against the petitioner. The Superintending Engineer then passed the third of the orders impugned, that is to say, the order dated 01.04.2019, withholding one day's salary, payable to the petitioner. He next passed another order dated 15.05.2019, followed by a show cause notice dated 01.06.2019, asking the petitioner to show cause for his misconduct on account of unlawful absence from duty. The Superintending Engineer then passed the fourth of the orders impugned, that is to say, the order dated 12.06.2019, awarding adverse entry to the petitioner for the year 2019-20.

7. The Superintending Engineer passed another of the impugned orders impugned, being an order dated 13.06.2019, withholding a day's salary payable to the petitioner. The Superintending Engineer next passed orders dated 10.07.2020 and 29.07.2020, followed by a show cause notice dated 24.07.2020, calling upon the petitioner to reply and show cause. These three orders were again followed by the next of the orders impugned, that is to say, the order dated 19.07.2019, awarding an adverse entry in the petitioner's character roll.

8. The petitioner preferred a representation dated 01.08.2019 against the bad entry for the year 2018-19, described as a censure by the petitioner in paragraph No.18 of the writ petition. A representation against the bad entry was also filed to the Chief Engineer, respondent No.2, who passed the order impugned dated

31.07.2020, affirming the adverse entry awarded to the petitioner in his character roll.

9. It is next pleaded by the petitioner that the Superintending Engineer by his order dated 05.09.2020, also impugned, has awarded an adverse entry to the petitioner in his character roll for the year 2019-20, according to the petitioner, without authority of law. The petitioner says that the Superintending Engineer, by an order dated 01.10.2021, awarded yet another bad entry in the petitioner's character roll, holding his integrity doubtful for the year 2020-21 without authority of law. The order dated 01.10.2021 is also under challenge.

10. Aggrieved by the orders dated 31.07.2020 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., which are said to be two in number of the same date, the petitioner filed Writ-A No.10876 of 2020. This Court, vide order dated dated 03.12.2020, directed the petitioner's revisions dated 21.08.2020 and 14.09.2020 against the orders dated 31.07.2020 to be decided by the concerned Authorities in accordance with law, within a period of three months, from the date of production of a certified copy of the order passed by this Court in the writ petition under reference. The Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., vide his memo dated 18.03.2021, held the petitioner's representation dated 21.08.2020 against the order dated 31.07.2020 not worth consideration, since the issue had already been examined and decided. So far as the representation dated 14.09.2020 is concerned, it was said that it related to the adverse entry for the year 2019-20, which is being examined and necessary proceedings would be taken.

11. It appears that, apart from the various adverse entries that were awarded to the petitioner during the years 2018-19, 2019-20 and 2020-21 for the petitioner's acts of misconduct noticed by the Superintending Engineer, disciplinary proceedings were also instituted against him on 31.07.2020. A charge-sheet was issued to the petitioner, to which he submitted a reply. An inquiry report was submitted in the matter on 28.06.2022 and on its basis, the Engineer-in-Chief, Irrigation and Water Works Department, Government of U.P., Lucknow, passed an order dated 17.01.2023, punishing the petitioner with the award of a censure and withholding of two increments without cumulative effect (temporarily).

12. The order dated 17.01.2023 was passed during the pendency of this writ petition and, therefore, challenged by means of an amendment application, which this Court granted. Some pleadings were incorporated, including grounds and challenged to the last of the impugned orders, that is to say, the one dated 17.01.2023 passed by the Engineer-in-Chief.

13. It is in this manner that aggrieved by as many as eleven impugned orders, above described, this writ petition has been instituted by the petitioner.

14. Notice of motion was issued on 21.03.2022 and a counter affidavit filed on 30.04.2022. After the last of the impugned orders was passed and amendment application granted on 08.08.2024, since respondent Nos.2 to 5 had already filed a counter affidavit to the amendment

application, and, the respondents had answered the amended pleas subsequently incorporated, the petition was admitted to hearing on 08.08.2024. After hearing learned Counsel for the parties, judgment was reserved.

15. Heard Mr. Adarsh Bhushan, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel on behalf of the State.

16. Mr. Adarsh Bhushan, learned Counsel for the petitioner, has advanced his submissions on behalf of the petitioner at great length and criticized the various orders impugned on their individual grounds, that are summarized hereinafter.

17. The impugned order dated 12.10.2018 awarding censure, according to the learned Counsel for the petitioner, has been passed by the respondents without considering the petitioner's replies dated 11.06.2018, 13.06.2018, 15.06.2018 and 21.06.2018. It is, thus, an order passed in violation of principles of natural justice. Regarding the impugned order dated 16.03.2019, it is argued that the petitioner was found absent on 15.11.2018 between 1.00 p.m. to 3.45 p.m., and, also, on 14.03.2019 between 11.15 a.m. to 1.15 p.m., but the allegation shows that respondent Nos.4 and 5, without calling for any explanation from the petitioner, have passed the order impugned, withholding the petitioner's integrity and giving him an adverse entry for the year 2018-19. The order is also criticized as one being in violation of natural justice.

18. About the next order impugned dated 01.04.2019, it is submitted by the learned Counsel for the petitioner that the petitioner is said to have absented from duty for five hours on 31.03.2019 and on this ground, punishment of stoppage of a day□s and four hours' salary has been awarded, which is not one of the contemplated penalties under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules,1999 (for short, 'the Rules of 1999').

19. So far as the impugned order dated 12.06.2019 is concerned, it is submitted that it is about the petitioner's unauthorized absence on 11.06.2019, regarding which a punishment has been awarded to him, without calling for his explanation, showing the 5th respondent's mala fides. This order is one withholding the petitioner's integrity as doubtful and giving him a bad entry for the year 2019-20. Assailing the impugned order dated 13.06.2019, the submission is that the punishment awarded to the petitioner is stoppage of a day's salary, which is not one of the punishments prescribed under the Rules of 1999. It is also urged that this order, though one visiting the petitioner with adverse civil consequences, has been passed without opportunity of hearing.

20. The next order that falls in the line of criticism by the learned Counsel for the petitioner is the one dated 19.07.2019, awarding a bad entry in the petitioner's character roll and withholding his integrity as doubtful for the year 2018-19. It is submitted that this punishment has been awarded without calling for any explanation from the petitioner. The order is, therefore, said to be one in violation of the principles of natural justice.

21. Learned Counsel for the petitioner next submits that the order impugned dated 31.07.2020, rejecting the petitioner's representation dated 01.08.2019

by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., affirming the adverse entry awarded to the petitioner in his character roll for the year 2018-19 by the Superintending Engineer, is manifestly illegal, inasmuch as the petitioner has not been supplied the comments/ report of the Superintending Engineer, respondent No.4, with opportunity to make his submissions thereagainst, before rejecting his representation dated 01.08.2019. It is submitted that the report of the Superintending Engineer, which is material adverse to the petitioner, has been considered by the Chief Engineer behind his back, while passing the impugned order, which renders it vitiated by malice in law. The impugned order dated 05.09.2020 has been assailed by the learned Counsel for the petitioner on ground that in awarding a bad entry in his Annual Confidential Report (for short, 'ACR') for the year 2019-20 and withholding his integrity, the Superintending Engineer lost sight of the fact that for the same misconduct, he has already been awarded a punishment vide order dated 13.06.2019, stopping a day's salary, which is not a punishment contemplated under the Rules of 1999. Still, learned Counsel would submit that giving him a bad entry and withholding his integrity for the same misconduct, regarding which he has been punished with stoppage of a day's salary, constitutes punishment twice over for the same wrong or misconduct. He has also urged that no opportunity has been given to the petitioner regarding the impugned order dated 18.03.2021.

22. It is urged that the petitioner's revision has been rejected by the Chief Engineer (Nal Koop Madhya) by almost a laconic order dated 18.03.2021 in a cursory manner without application of mind to the petitioner's grievance raised in the revision/ representation. It is next urged that the impugned order dated 01.10.2021 is bad in law because in awarding an adverse entry in the petitioner's character roll for the year 2020-21, his explanation has not at all been called, which shows the respondents' mala fides.

23. It is in the last submitted by the learned Counsel for the petitioner that the impugned order dated 17.01.2023 has been passed, awarding a censure to the petitioner and withholding two increments in consequence of proceedings of inquiry held in breach of Rule 7 of the Rules of 1999. Elaborating his submissions on this point, it is argued by the learned Counsel for the petitioner that no date, time and place has been fixed by the Inquiry Officer for holding the inquiry, vitiating it. It is also urged that no documents have been supplied to the petitioner in order to enable him to answer the charge(s), as required by the Rules of 1999. Learned Counsel submits that the punishment awarded is absolutely illegal, being one in breach of the salutary principles, governing the holding of such inquiries and Rule 7 of the Rules of 1999. Learned Counsel for the petitioner has placed heavy reliance upon **Vijay Singh v. State of U.P. and others, (2012) 5 SCC 242** in aid of his submissions on multiple counts, challenging the various orders impugned, and those would presently be considered.

24. Ms. Monika Arya, learned Additional Chief Standing Counsel, has supported the orders impugned and submits that the petition is multifarious because different orders impugned, giving rise to distinct causes of action, have been challenged in one writ petition, which is

impermissible. She has further argued that the orders impugned, awarding bad entries in the ACRs relating to the petitioner, are not really orders of punishment, but ones of annual appraisal and assessment of the employee's performance. These do not require opportunity to be given, like that in case of an order awarding punishment, major or minor. She has next submitted that so far as withholding of the petitioner's salary for a day is concerned, that is an order passed in the exercise of the employers' jurisdiction to deny wages to an employee, who does earn it by not working for the day. Ms. Arya has particularly defended the order dated 17.01.2023 on ground that the order impugned awards a minor penalty, and, therefore, this is not a case where Rule 7 of the Rules of 1999 would require a date, time and place of the inquiry to be fixed and notified by the Inquiry Officer to the parties. She submits that a minor penalty can be awarded on the basis of a simple show cause notice.

25. The first of the orders impugned, to wit, the one dated 12.10.2018, is not really an order, writing a bad entry as a matter of the employee's performance in his ACR. It is an order referring to a misconduct about the petitioner's rude behaviour with his superior and then punishing him with a censure to the effect that the petitioner's conduct is being censured for his indiscipline and rude behaviour. A censure entry, as distinct from a bad entry in the ACR, is one of the minor penalties contemplated under Rule 3(i) of the Rules of 1999. The procedure for imposing a minor penalty is envisaged under Rule 10 of the Rules of 1999. Rule 10 reads:

> **10. Procedure for imposing minor penalties**- (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.
>
> (2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such order as he considers proper and where a penalty is imposed, reason thereof shall be given.
>
> (3) The order shall be communicated to the concerned Government Servant.

26. The imposition of a minor penalty, therefore, requires the Disciplinary Authority to communicate the substance of the imputations against the employee granting him a reasonable time to submit his explanation. After the explanation is received or the opportunity forfeited, the Disciplinary Authority, after considering the explanation, if any, and the records, may pass orders that the said Authority considers appropriate. It is also a requirement of Rule 10 that reasons for imposing a minor penalty be given. It is, thus, evident that the imposition of a minor penalty provided under Rule 3(i) to (v) too requires adherence to the principles of natural justice, in particular, the furnishing of opportunity and giving of reasons. It is quite another matter that the more elaborate procedure for holding a departmental inquiry under Rule 7, where a major penalty under Rule 3(i) to (iv), falling under the part, governing 'Major Penalties',

is not required to be followed in cases of imposition of a minor penalty. Ex facie, the impugned order dated 12.10.2018 has been passed without any opportunity of hearing being afforded to the petitioner and it is definitely an order, punishing the petitioner for a misconduct imputed to him. The impugned order is, therefore, bad, first, on the principle of violating the rule of audi alteram partem, and, also being one made in breach of Rule 3(i) of the Rules of 1999, governing imposition of minor penalties on government servants, serving the State Government of Uttar Pradesh. The impugned order dated 12.10.2018 is, therefore, fit to be quashed with liberty to the respondents to pass a fresh order, after affording opportunity of hearing to the petitioner, if they so desire.

27. So far as the orders dated 16.03.2019, 19.07.2019 and 31.07.2020 are concerned, we propose to consider the validity of of all the three orders together. All the three orders are grouped together to consider their validity because the subject matter in all the three orders are bad entries or adverse entries awarded to the petitioner for the year 2018-19. The order dated 31.07.2020 is an affirmation of the two orders by the Reviewing Authority, awarding adverse entries/ bad entries in the ACR upon the petitioner, assailing the award of those entries by the Reporting Authority. A perusal of the order dated 16.03.2019 indicates that the order directs the petitioner's integrity to be recorded as suspect/ withheld on ground of his misconduct, for speaking falsehood and unbecoming behaviour. It appears on a closer perusal of the order that the basis to withhold the petitioner's integrity and class it as suspect, is the petitioner's act of absenting from duty on 15.11.2018 without information to the petitioner from 1.00 p.m. to 3.45 p.m., and, again on 14.03.2019, from 11.45 a.m. to 1.15 p.m.

28. The other limb of the basis to withhold the petitioner's integrity is that when called upon to explain his absence, the petitioner employed objectionable and unparlimentary language, founding his explanation on false and concocted facts. It is also noticed that baseless allegations were said to be made by the petitioner against the Superintending Engineer, the Authority who awarded the adverse entry dated 16.03.2019. The latter order dated 19.07.2019 shows that for the same period, that is to say, 2018-19, the petitioner was awarded an entry in his ACR, classifying him as bad or poor and his integrity doubtful. The precise words employed in the order dated 19.07.2019 are *Shreni Kharab and Satyanishtha Sandigdh*. A reading of the order dated 19.07.2019 together with the impugned order dated 16.03.2019 would show that doing an appraisal of the petitioner's performance, the Superintending Engineer, for acts of absenteeism and impertinent behaviour on the petitioner's part in employing unparliamentary language against his superiors when asked to explain, withheld the petitioner's integrity for the year 2018-19. By the latter order dated 19.07.2019, the respondents did a final appraisal of the petitioner's performance and finally rated his category as poor or bad in the ACR for the year 2018-19 and integrity suspect. The order passed on 19.07.2019 is also founded on the same material, may be incorporating some later events, where the petitioner has been found at fault for not doing duties assigned to him and his rude and impertinent behaviour. Both these orders or the last of them, finally awarding a bad entry to the petitioner in his ACR for the year 2018-19, has been affirmed by the

Reviewing Authority vide the order impugned dated 31.07.2020.

29. So far as the petitioner's objection that before awarding these entries, the petitioner has not been called to give his explanation, which shows the respondents' mala fides, is concerned, it requires some profound consideration.

30. An entry in the employee's confidential roll is about his performance and rating done by the employers in the course of his service during the relevant period of time. All that is required is that if the entry is adverse to the employee, it should be communicated to him, after it has been awarded. The essential purpose of writing an ACR, amongst others, is to enable the employee to know his shortcomings and improve upon them. Still, since these adverse entries in the ACR can have some impact on the employees' avenues of promotion etc., the employee has opportunity to represent against such entries to the Reviewing Authority, who may pass such orders, as he thinks fit, after appraising the record and the comments of the Authority, awarding the entry. Generally, adverse entries given by the employers in the ACR are not much open to intrusion in a secondary review done by Courts, except when the entry given is patently illegal or perverse. It is not for the Court to step into the shoes of the employers, who are the primary decision maker in the matter of grading and appraising the performance of their employees and revise those entries

31. Now, the question is if the employee is entitled to opportunity before an entry is awarded in his ACR, that rates him poor or is otherwise adverse to him. As a rule that is not the requirement for an adverse entry in the ACR, inasmuch as it is not a punishment awarded to the employee. But, there is an exception. ACRs are generally non-speaking and cryptic expressions of opinion about the employee, rating him as poor, good, very good, outstanding etc., or certifying his integrity or holding it suspect. No detailed reasons with reference to specific incidents, acts or omissions are mentioned in the ACR. If for some reason, an adverse assessment in the ACR is backed by specific instances of action or inaction attributed to an employee, opportunity of hearing him may become necessary. In cases, such as these, the imputations that then go in the ACR, partake of the colour of punishment or penalty, that is censured in the ACR. In such cases, as already remarked, the employee has the right to be heard, may be not through a very elaborate procedure. In this context, we may refer to with profit to the decision of the Constitution Bench of the Supreme Court in R.L. Butail v. Union of India and others, 1970 (2) SCC 876. The decision was rendered in the context of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the award of the adverse entry in the ACR under Rule 11 of those Rules. In R.L. Butail (supra), it has been held:

12. On March 3, 1961, an office order was issued by the Commission which superseded all instructions issued previously on the subject of maintenance of confidential reports. This order applied to all officers of the Commission, gazetted and non-gazetted, and also to its subordinate offices. The order once again recites the importance of preparing and maintaining confidential reports. Rule 4 requires that such a report should contain an appreciation of the general qualities of the Government servant such as integrity,

intelligence, keenness, industry, tact, attitude towards his superiors and subordinates, relations with fellow employees, work-attitudes, etc. and also □a summing-up□ in general terms of the government servant's good and bad qualities and a categorisation or rating such as □Outstanding□, □Very good□, □Good□, □Fair□, or □Poor□. Such a categorisation is, however, not necessary in the case of officers of or above the rank of Superintending Engineer. Rule 10 expressly provides that the reporting authority is not required to give any specific instances of his good or bad work or conduct upon which the opinion is based. Rule 28 provides that while communicating an adverse remark to the concerned government servant the substance of such report and not its actual wording need be conveyed. That is because the primary object of such communication is, firstly, that the concerned government servant may remedy his defects, and secondly, that it should serve as a timely warning to the government servant of such defects which might otherwise deprive him of chances of promotion in future. Rule 32 entitles a government servant to make a representation. Such representation would be examined by an officer superior in rank to the reviewing officer. That officer would either reject the representation or alter the remark where he thinks necessary and in the event of his finding that the remark is actuated by malice or is incorrect or unfounded, he would expunge it. Rule 34 provides that adverse entries relating to any specific incident will not ordinarily find place in the confidential record. But, where a warning is issued as a result of any specific incident, a copy thereof will ordinarily be kept in the personal file of the government servant concerned. In that case he has to make a specific order to that effect. But before making such an order he must give to the concerned government servant a reasonable opportunity to present his case relating to the incident. In case departmental proceedings are instituted as a result of such an incident and a formal punishment, such as censure, is awarded, a copy of the order of such punishment should invariably be placed in the confidential record of the government servant.

13. These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the government servant. In such a case the officer making the order has to give a reasonable opportunity to the government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated.□

(emphasis by Court)

32. Here, a perusal of the impugned orders dated 16.03.2019 and 19.07.2019 shows that the Superintending

Engineer has relied upon specific instances of unauthorized absence, exhibition of rude behaviour, vis-a-vis superiors etc., as the basis for awarding the impugned ACR for the year 2018-19. It is on account of these specific instances that the law would entitle the petitioner to an opportunity of hearing before he is rated bad or poor in the ACR for the relevant year. This is the principle laid down by the Constitution Bench in R.L. Butail.

33. There is another feature and a distinct part to the orders impugned dated 16.03.2019 and 19.07.2019, awarding an adverse entry to the petitioner for the year 2018-19.

34. What we notice is that, apart from rating the employee as poor or bad, his integrity has been held suspect vide order dated 19.07.2019, after being withheld by the order dated 16.03.2019.

35. In order that an employee's integrity may be classed as suspect, there must be some act of immorality, like financial dishonesty or other moral turpitude, affecting the employee's character before his integrity can be classed as suspect. Here, the conduct of the employee, appraised during the financial year 2018-19, shows a case of unauthorized absence from duty for two days, for some hours of the duty time, and then, employment of rude or impertinent language by the employee in his written and oral address to the competent officer of the employers. The other is about not performing his assigned duties when asked to do those by the Superintending Engineer. The petitioner's conduct again, in using unparliamentary language and threatening the Superintending Engineer, may be instances of insubordination, but certainly not anything to do with integrity. If every word of the imputations against the petitioner, that have been the subject matter of appraisal in passing the orders impugned dated 16.03.2019 and 13.06.2016, is regarded as truthful, a case of withholding integrity or regarding it as suspect, is not made out by any standard. The part of the adverse entry in the ACR, which by the first order, withholds the petitioner's integrity, and by the latter order, classes it as suspect, is the result of a perverse conclusion. Reference in this regard may be made to Vijay Singh (supra) relied upon by the learned Counsel for the petitioner, where it was held:

"17. In such a fact-situation, the subordinate officer has to face the adverse consequences without any fault on his part. The grievance raised by the appellant that recording the past criminal history of an accused is relevant in non-bailable offences only as it may be a relevant factor to be considered at the time of grant of bail, and he did not record the same as it was a bailable offence, has not been considered by any of the authorities at all. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision, etc. otherwise it would be a case of non-application of mind.

18. The present case shows dealing with the most serious issues without any seriousness and sincerity. Integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity. The charge of

negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity.

(emphasis by Court)

36. We are, therefore, of considered opinion that the impugned orders dated 16.03.2019, 19.07.2019 and 31.07.2020, insofar as these direct withholding of integrity and classifying it as suspect, are bad in law. The consequence would be that the impugned orders 16.03.2019, 19.07.2019 and 31.07.2020, insofar as these rate the employee as poor or bad in his ACR, would have to be quashed with liberty to the respondents to pass a fresh order, after granting reasonable opportunity of hearing to the petitioner in regard to the specific incidents, on the foot of which he has been rated adversely. The other part of these impugned orders, where the petitioner's integrity was earlier withheld and then opined to be suspect, must be quashed altogether.

37. We next turn to the impugned orders dated 01.04.2019 and 13.06.2016, the validity of both of which can be tested together, as the same point is involved. These orders direct the withholding of a day's salary on two occasions, covered by the two orders impugned. It is trite law that a punishment, that can be awarded, is only one, which the Rules provide. The punishment, to be meted out to an employee by the employers for a defined misconduct, is not something for the employers' fancy or innovation. Only that punishment can be awarded, which the rules provide; not anything different. **In State of U.P. and others v. Madhav Prasad Sharma, (2011) 2 SCC 212,** which was a case arising under the Uttar Pradesh Subordinate Police Officers/ Employees (Punishment and Appeal) Rules, 1991, the Supreme Court held:

16. We are not concerned about other rules. The perusal of major and minor penalties prescribed in the above Rule makes it clear that sanctioning leave without pay is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of no work no pay cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms. Rule 7 empowers the Government or any officer of the police to award the punishment mentioned in Rule 4. Rule 8 provides for punishment of dismissal and removal. Thus the punishment of dismissal from the service is the punishment which has been awarded to the respondent in accordance with Rules 4 and 8 of the Rules. There is no question of awarding two punishments in respect of one charge.

38. In the present case under the Rules of 1999, all the penalties, that can be awarded to a government servant, are enumerated in Rule, which reads:

3. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the government servants;

Minor Penalties

(i) Censure;

(ii) Withholding of increments for a specified period;

(iii) Stoppage at an efficiency bar;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;

(v) Fine in case of persons in holding Group D posts;

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

Major Penalties

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualify from future employment.

Explanation- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service;

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;

(iii) Reversion of a person appointed to probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the term of the service or the rules and order governing such probation.

39. A perusal of Rule 3 of the Rules of 1999 would show, particularly the part relating to minor penalties, that there is no penalty envisaged there, which may authorize the respondents to withhold one day's salary for unauthorized absence of an employee. Unauthorized absence may be a misconduct, which may entail punishment under the Rules of 1999, but punishment, depending upon the gravity of the misconduct proved, has to be one that is enumerated in Rule 3 of the Rules of 1999. As such, the impugned orders dated 01.04.2019 and 13.06.2019, imposing the punishment of withholding a day's salary, are manifestly illegal.

40. The next to be considered is the validity of the impugned orders dated 12.06.2019 and 05.09.2020, both of which relate to the adverse entry awarded to the

petitioner in his ACR for the year 2019-20. By the order impugned dated 12.06.2019, the petitioner has been awarded an adverse entry saying that his conduct is censured and integrity suspect. This entry has been made in the petitioner's ACR for the year 2019-20. By a later order dated 05.09.2020, the petitioner's integrity has been classed as suspect. The order dated 05.09.2020 is a sequel to the earlier order dated 12.06.2019. The later order rates the petitioner's category in his ACR for the year 2019-20 as bad or poor and his integrity suspect. The first of these orders was a tentative assessment made early during the year 2019-20, whereas the later order, that is to say, the one dated 05.09.2020, makes a final award of the petitioner's performance in his character roll. The order dated 12.06.2019 cites a specific instance for censuring the petitioner and withholding his integrity. The specific instance is an incident dated 11.06.2019, when the petitioner signed the attendance register for 10.06.2019 on 11.06.2019, while signing it for 11.06.2019 as well. The order says that the petitioner was absent from duty on 11.06.2019 as well. The petitioner's conduct was censured for his act of posting attendance on an antedated basis. Likewise, the latter order dated 05.09.2020, that rates the petitioner's category as poor and integrity suspect during the year 2019-20, is also based on specific instances of misconduct. It is mostly about signing the attendance register on 10.06.2019 and 11.06.2019, though absent from duty. There is also a remark in the order that he caused political pressure to be brought upon the respondents through his wife, instead of improving his conduct and performance. In substance, while finally awarding the petitioner an adverse ACR for the year 2019-20 vide order dated 05.09.2020, rating his category as poor and integrity suspect, the respondents have relied upon specific instances of misconduct etc. It is not a non-speaking entry, founded on appraisal of the petitioner's performance. Both the impugned orders dated 12.06.2019 and 05.09.2020 are replete with reasons, censuring the petitioner's conduct and awarding him an adverse entry, both as regards his performance, category and integrity.

41. Learned Counsel for the petitioner is, therefore, right in his submission that this kind of an order ought not have been made without affording the petitioner opportunity of hearing. This is the principle laid down by the Constitution Bench of the Supreme Court in **R.L. Butail**. Both the orders impugned dated 12.06.2019 and 05.09.2020 would have to be quashed with liberty to the respondents to pass fresh orders, both as to the petitioner's performance, category and integrity. We may remark here that in case of the orders dated 12.06.2019 and 05.09.2020, we have not examined the issue, whether the misconduct attributed to the petitioner, comes within the mischief of shadowing his integrity.

42. The next order to be considered is the order dated 18.03.2021 of the Superintending Engineer, rejecting the petitioner's revisions/ representations dated 31.08.2020 and 14.09.2020 in compliance with the orders of this Court dated 03.12.2020. One of the representations, that is to say, the one dated 31.08.2020, had already been considered and decided, calling for no further action, and about the other representation dated 14.09.2020, relating to the adverse entry for the year 2019-20, the same is shown to be still under consideration.

43. So far as the impugned order dated 18.03.2021 is concerned to the extent that this order discards the petitioner's representation dated 31.08.2020 on the ground that the issue had already been decided vide order dated 31.07.2020, the same cannot be upheld because we have quashed the order dated 31.07.2020 with liberty to the Reporting Authority to pass fresh orders regarding the petitioner's ACR for the year 2018-19 relating to his performance entry, after affording opportunity of hearing. Also, we have quashed the order dated 31.07.2020 as also the orders of the Reporting Authority for the year 2018-19, insofar as these class the petitioner's integrity as suspect absolutely and without any liberty for further inquiry or fresh orders. In the fitness of things, we are of opinion that the order dated 18.03.2021 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., deserves to be quashed to the extent it relates to the petitioner's representation dated 31.08.2020, disposed of by the order dated 31.07.2020 and since quashed by this judgment.

44. The next order under challenge is the order dated 01.10.2021. It awards an adverse entry to the petitioner in his ACR for the year 2020-21. It rates the petitioner as bad or poor rating him, in Hindi as follows: Shreni Kharab. A perusal of the impugned order dated 01.10.2021 reveals that the material on which the Reporting Authority has acted, is to the effect that the petitioner had misbehaved with a colleague of his one Santosh Kumar Tripathi, regarding which the latter had complained through his complaint dated 29.04.2020. The petitioner's explanation was sought by the Superintending Engineer vide memo dated 04.05.2020 within three days. In reply, the petitioner had expressed himself in words of taunt and acknowledging whatever he had said. The conduct was regarded by the Superintending Engineer as an act of indiscipline, violating official propriety and decorum, besides gross disobedience of official directions. On the totality of the material, he was rated as poor in the ACR for the year 2020-21. Now, there is objective material available, on the basis of which the Reporting Authority arrived at a subjective satisfaction to rate the petitioner poor. There is no good ground for this Court to interfere with that conclusion of the Superintending Engineer in the exercise of our jurisdiction under Article 226 of the Constitution. We are, therefore, minded to uphold the order dated 01.10.2021.

45. This takes us to the last of the orders impugned, that is to say, the one dated 17.01.2023. By this order, the petitioner has been punished on as many as five charges and awarded punishment of withholding two increments, without cumulative effect (temporarily), besides award of censure. This order has been passed after departmental proceedings were initiated under the Rules of 1999 and charge-sheet issued. It does appear that some major penalty was in the respondents' contemplation and it is for this reason that a regular departmental inquiry was convened with the issue of a charge-sheet. But, upon conclusion of proceedings, the Disciplinary Authority found it to be a case, which did not call for the imposition of a major penalty, as it seems, and proceeded to award the penalty of withholding two increments without cumulative effect and a censure. Now, both these punishments are minor penalties within the meaning of Rule 3 of the Rules of 1999. None of them is a major penalty.

46. The learned Counsel for the petitioner has assailed the impugned order dated 17.01.2023 on the ground that no date, time and place for holding the inquiry was fixed or intimated to the parties. It is true that in a departmental inquiry, both salutary principle and Rule 7 of the Rules of 1999 mandate the scheduling of a date, time and venue by the Inquiry Officer and its due intimation to the delinquent as well as the establishment. The said rule, however, is applicable in a case, where a major penalty is likely to be imposed. May be in this case, it was likely to be imposed, but it was not in fact imposed. What was imposed are minor penalties. Minor penalties have a far shorter procedure of giving the delinquent a show cause notice and seeking his explanation, after considering which, orders may be passed, disposing of the proceedings, may be punishing the delinquent with one or more minor penalties. If, therefore, after commencing a regular inquiry, post issue of a charge-sheet, the employers do not proceed to award a major penalty, and, instead, inflict a minor penalty within the meaning of Rule 3 of the Rules of 1999, the failure to adhere to the letter of Rule 7 in holding the inquiry, would in no way vitiate the outcome. The reason is that for a minor penalty, a far more summary procedure of simply issuing a show cause notice is envisaged under Rule 10 of the aforesaid Rules. The requirements of Rule 10 have been satisfied within the fold of the proceedings taken by the respondents, and in fact, much more than that while passing the order impugned dated 17.01.2013. The said order cannot, therefore, be faulted.

47. In the result, this petition succeeds and is **allowed in part**. The impugned order 12.10.2018, the orders dated 16.03.2019, 19.07.2019 and 31.07.2020, the orders dated 01.04.2019 and 13.06.2019, 12.06.2019, 05.09.2020 and the order dated 18.03.2021 passed by the respondents to the extent indicated in the body of the judgment alone are hereby **quashed**. The orders dated 01.10.2021 and 17.01.2023 are hereby **upheld** and the writ petition dismissed to that extent.

48. Consequences to follow.

49. There shall be no order as to costs.

(2025) 9 ILRA 999
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.09.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE PRASHANT KUMAR, J.

Writ - A No. 2420 of 2023

Bhagwati Prasad ...Petitioner
Versus
U.O.I. ...Respondent

Counsel for the Petitioner:
Avinash Singh Vishen, Sajeet Singh

Counsel for the Respondent:
A.S.G.I., Devrishi Kumar

Issue for Consideration

1. Permissibility of withholding of Pension and Gratuity by passing an order beyond the period of four years.
2. Effect of pendency of Criminal Appeal against the conviction order on the validity of the punishment order, which was based on same conviction order.

Headnotes

(A) Service law – Central Civil Services (Pension) Rules, 1972 – Rule 9 – Withholding of Pension and gratuity –

Punishment order was passed by the President of India beyond period of four years – Validity challenged:

Held : Rule 9(4) or for that matter Rule 9(6) of the Central Civil Services (Pension) Rules, 1972 do not lay down any time limit for taking an action under Rule 9(1) based on any judicial proceedings. Such a time limit has been prescribed in Rule 9(2) of the Central Civil Services (Pension) Rules, 1972 but only in respect of departmental proceedings and not judicial proceedings, therefore, reliance placed by learned counsel for the petitioner upon Rule 9(2)(b)(ii) read with Rule 9(6) is mis-conceived – There being no time limit prescribed for taking such decision as has been taken in respect of the petitioner based on judicial proceedings with reference to Rule 9(1) of the Central Civil Services (Pension) Rules, 1972, such decision cannot be said to be time barred. [Paras 6 and 8]

(B) Service law – Withholding of Pension and gratuity – Punishment order was based on a conviction order passed under the Prevention of Corruption Act, 1988 – Appeal against conviction is pending, wherein the sentence order has been stayed – Effect :

Held : Mere filing of a criminal appeal does not wipe out the conviction as of now especially as there is no stay on the conviction of the appellant in the criminal appeal. It is true that in view of filing of the criminal appeal by the petitioner, challenging his conviction vide judgment dated 26.04.2014 under Section 7 and 13(2) of the Prevention of Corruption Act, 1988, the conviction has not attained finality and the judicial proceedings are still going on, but, it is equally true that conviction has not been wiped off. In the event the petitioner's appeal succeeds, he may be entitled to claim revocation of the decision dated 12.04.2021. [Para 9] (E-1)

Case Law Cited

N.K. Suparna vs. Union of India and others, ILR 2004 KAR 4628; W.P. (C) No. 12470 of 2018, P.C. Mishra v. Union of India decided on 26.11.2018; Union of India v. V.K. Bhaskar, 1997 (11) SCC 383; K. C. Sareen v. CBI, Chandigarh, 2001 (6) SCC 584 – **referred to.**

List of Acts

Central Civil Services (Pension) Rules, 1972 – Rule 9; Prevention of Corruption Act, 1988 – Ss. 7, 13(1)(d) and S. 13(2)

List of Keywords

Withholding of Pension and Gratuity; Conviction; Appeal; Sentence; Time limit; Departmental proceeding; Judicial proceeding; Criminal proceeding; Age of superannuation; Time barred; Finality; Impediment.

Case Arising From

Judgment and order dated 12.10.2022 passed by Central Administrative Tribunal, Lucknow in Original Application No. 332/00327 of 2021.

Appearances for Parties

Advs. for the Petitioners : Avinash Singh Vishen, Sajeet Singh

Advs. for the Respondeents : A.S.G.I., Devrishi Kumar

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Avinash Singh Vishen, learned counsel for the petitioner and Shri Devrishi Kumar, learned counsel for the opposite parties.

2. By means of this petition challenge has been raised to a judgment and order dated 12.10.2022 rendered by Central Administrative Tribunal, Lucknow in Original Application No.332/00327/2021.

3. The petitioner herein had filed the aforesaid Original Application challenging an order dated 12.04.2021, whereby the President of India had ordered withholding of pension and gratuity payable to the applicant/ petitioner in its entirety. This decision was taken on the basis of petitioner's conviction on 26.04.2014 under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 by the Special

Judge, Anti Corruption Bureau, CBI (West), Lucknow. He was sentenced to undergo maximum five years' rigorous imprisonment with a fine of Rs.90,000/-. The Central Administrative Tribunal, Lucknow has dismissed the Original Application.

4. The contention of petitioner's counsel before us was that there is a time limit of four years prescribed in Rule 9 of the Central Civil Services (Pension) Rules, 1972 which has not been taken into consideration while passing the order dated 12.04.2021 nor has the Tribunal taken into consideration the said proviso. In this context he referred to Rule 9(2)(b)(ii) read with Rule 9(6) of the Central Civil Services (Pension) Rules, 1972. The other contention was that the petitioner has challenged his conviction and sentence by way of filing Criminal Appeal No.590 of 2014 before the High Court where the appeal is still pending wherein his sentence has been stayed and, as, by virtue of pendency of the appeal the said conviction has not attained finality rather the judicial proceedings are still continuing, therefore, an order under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972 could not have been passed but this aspect of the matter has been lost sight of by the Central Administrative Tribunal, Lucknow while passing the order dated 12.04.2021 and the judgment dated 12.10.2022 as the petitioner retired on 30.06.2000 and the charge sheet was filed in August, 2000, whereas the order dated 12.04.2021 has been passed beyond a period of four years. In this contention he referred to Rule 9(2)(b)(ii) read with Rule 9(6) of the Central Civil Services (Pension) Rules, 1972. These were the only two grounds pressed before us.

5. Rule 9 of the Central Civil Services (Pension) Rules, 1972 reads as under :-

"9. Right of President to withhold or withdraw pension *- [(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :*

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem].

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, is not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in relation to the Government servant during his service.

(3) [omitted]

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 59 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(5- A) The President may at any time, either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, after consultation with the Union Public Service Commission, and may confirm, modify or set aside the order; or remit the case to any authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or pass such other orders as he may deem fit:

Provided that no order enhancing the amount of the pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and except after consultation with the Union Public Service Commission.

(5-B) The President may at any time, either on his own motion or otherwise review any order passed under these rules, where extenuating or special circumstances exist to warrant such review or when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:

Provided that no order enhancing the amount of the pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and except after consultation with the Union Public Service Commission.]

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date, and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court."

6. The pension and gratuity of the petitioner has been withheld entirely under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972. The petitioner's counsel has relied upon Rule 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972. However, on a careful reading of the entire Rule 9 of the Central Civil Services (Pension) Rules, 1972 we find that Rule 9(2) relates only to departmental proceedings as referred in Rule 9(1). It does not relate to judicial proceedings which have been referred in Rule 9(1) of the Central Civil Services (Pension) Rules, 1972. No doubt Rule 9(6) of the Central Civil Services (Pension) Rules, 1972 provides that for the purpose of said Rule judicial proceedings in the case of criminal proceedings shall be deemed to be instituted on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, but this Rule 9(6) is not referrable to Rule 9(1) under which the decision dated 12.04.2021 has been taken, rather, it is relatable and referrable to Rule 9(4) which provides that in the case of government servant who has retired on attaining age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Rule 9(2) of the Central Civil Services (Pension) Rules, 1972, a provisional pension as provided in Rule 59 of the Central Civil Services (Pension) Rules, 1972 shall be sanctioned. The institution of such departmental or judicial proceedings as referred in Rule 9(4) has to be understood as per Rule 9(6) of the Central Civil Services (Pension) Rules, 1972. Rule 9(4) of the Central Civil Services (Pension) Rules, 1972 only provides for a provisional pension in the eventualities mentioned therein and nothing more. Rule 9(4) or for that matter Rule 9(6) of the Central Civil Services (Pension) Rules, 1972 do not lay down any time limit for taking an action under Rule 9(1) based on any judicial proceedings. Such a time limit has been prescribed in Rule 9(2) of the Central Civil Services (Pension) Rules, 1972 but only in respect of departmental proceedings and not judicial proceedings, therefore, reliance placed by learned counsel for the petitioner upon Rule 9(2)(b)(ii) read with Rule 9(6) is mis-conceived.

7. As regards reliance placed by learned counsel for the petitioner on the decision of Karnataka High Court in the case of **N.K. Suparna vs. Union of India and others** reported in **ILR 2004 KAR 4628**, the Delhi High Court has considered the said judgment and has opined that relevant provisions do not lend themselves

to the interpretation or understanding as opined by the Karnataka High Court. We concur with the observations of the Delhi High Court in this regard, a fact which is also evident from the discussion made herein-above. The said decision of the Delhi High Court in the case of **P.C. Mishra vs. Union of India** reported in **W.P. (C) No.12470 of 2018** decided on 26.11.2018 has been referred in the decision dated 12.04.2021 which was impugned before the Central Administrative Tribunal, Lucknow. Infact the said order dated 12.04.2021 also refers to certain decisions of Hon'ble the Supreme Court such as in the case of **Union of India vs. V.K. Bhaskar reported in 1997 (11) SCC 383 and K.C. Sareen vs. CBI, Chandigarh** reported in **2001 (6) SCC 584**. We have also gone through the aforesaid decisions. They support the line of reasoning adopted by us as mentioned herein-above. While those decisions were rendered in a different context, that is of removal or dismissal of a person convicted of a criminal offence based on his conduct relating to such conviction etc., nevertheless, the principle referred and elucidated therein would apply to a case such as the one before us also. Of course the factum of pendency of the criminal appeal means that in the event the petitioner's appeal succeeds on merits he may be entitled to claim revocation of the decision dated 12.04.2021, but it does not mean that such pendency could thwart or impede a decision under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972. No such law has been placed before us by the petitioner's counsel.

8. We accordingly hold that there being no time limit prescribed for taking such decision as has been taken in respect of the petitioner based on judicial proceedings with reference to Rule 9(1) of the Central Civil Services (Pension) Rules, 1972, such decision cannot be said to be time barred. The contention of petitioner's counsel to the contrary is accordingly rejected.

9. As regards the other contention noticed herein-above, no doubt the petitioner has challenged his conviction by filing a criminal appeal but mere filing of a criminal appeal does not wipe out the conviction as of now especially as there is no stay on the conviction of the appellant in the criminal appeal. It is true that in view of filing of the criminal appeal by the petitioner, challenging his conviction vide judgment dated 26.04.2014 under Section 7 and 13(2) of the Prevention of Corruption Act, 1988, the conviction has not attained finality and the judicial proceedings are still going on, but, it is equally true that conviction has not been wiped off. In the event the petitioner's appeal succeeds, he may be entitled to claim revocation of the decision dated 12.04.2021, but it does not mean that such pendency is an impediment in taking a decision under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972.

10. For all these reasons we are of the opinion that the order dated 12.04.2021 which contains a detailed and reasoned decision demonstrating due and proper application of mind and has been passed, after due opportunity to the petitioner as mentioned therein, a fact which is not in dispute. The judgment of the Central Administrative Tribunal, Lucknow upholding the said decision dated 12.04.2021 and dismissing the Original Application of the petitioner does not suffer from any error warranting an interference under Article 226 of the Constitution of India.

11. The petition lacks merit and is accordingly **dismissed.**

(2025) 9 ILRA 1005
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 5353 of 2025

Prinsu Singh ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Sankalp Narain, Srivats Narain

Counsel for the Respondents:
A.S.G.I., Satish Chaturvedi, Sudarshan Singh

Issue for Consideration

Permissibility to condone the inordinate delay caused in approaching the High Court in respect of matter relating to claim of compassionate appointment.

Headnotes

(A) Service law – Constitution of India – Article 14 and 16 – Compassionate appointment – Rationale and Purpose – Appointment in the public office – Extent of compromising with the principle of merit while making such appointment :

Held : Appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees – The sole purpose of compassionate ground appointments is to provide prompt financial succour to a family of the deceased government employee which faces sudden financial destitution as a result of the death of the employee in harness **–** Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment. [Paras 5, 6 and 9]

(B) Service law – Constitution of India – Article 226 – Writ – Scope of Interference – Delay and laches – Claim of compassionate appointment – Though, first application was made within six months, but IInd application was made and subsequently writ petition was filed in the High Court after five years – Condonation of delay – Permissibility – Filing of representations over long year, how far relevant :

Held : The delay in approaching the Court was deliberate choice made by the petitioner and not a fait accompli forced by penurious circumstances. On the contrary as seen earlier the petitioner had busied himself in litigation for long years with his family members. He was always aware of his rights and possessed the wherewithal to approach this Court as well. In these circumstances the laches on the part of the petitioner in approaching this Court are not liable to be condoned. The writ petition is barred by delay and laches – Mere filing of representations over long years or even instituting a writ petition to decide the same after a long delay does not condone the laches on the part of the litigation. [Paras 20 and 21]

Held further : The respondent bank is certainly precluded from denying the compassionate grounds appointment on the grounds of delay in view of *Ajit Kumar's case*. However, this Court can always look into the issue of delay and laches on the part of the petitioner and decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. [Para 25]

Case Law Cited

Ashish Yadav v. Managing Director, UP State Road Transport Corporation and others rendered in Writ A No. 17483 of 2024; Canara Bank v. Ajithkumar G.K., 2025 SCC OnLine SC 290; C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115; Gian Singh Mann v. High Court of Punjab and Haryana and another, (1980) 4 SCC 266 **– referred to.** (E-1)

List of Acts

e-Circular dated 16.03.2021 – Clause 9

List of Keywords

Reinstatement; Backwages; Consequential benefits; Died in harness; Appointment on compassionate grounds; Public process of appointment; Sudden financial destitution; Open selection; Competitive merit; Government post; Inheritance; Kin; Vigilant; Delay; Financial crisis; Legitimacy; Rationale; Vested right; Condoning delay; Fait accompli; Litigation; Constitutional law; Misplaced sympathy; Overliberal approach; Hereditary appointment; Reservation.

Case Arising From

Inaction of the respondent in not deciding the representation for compassionate appointment.

Appearances for Parties

Advs. for the Petitioners : Sankalp Narain, Srivats Narain

Advs. for the Respondeents : A.S.G.I., Satish Chaturvedi, Sudarshan Singh

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

I. Introduction

1. The petitioner made a claim for appointment on compassionate grounds on 24.01.2020. The petitioner has sought for the following relief:

"(i) To issue a writ, order or direction in the nature of mandamus commanding the respondents to forthwith decide the applications preferred by the petitioner seeking his compassionate appointment, dated 24.01.2020 as well as 04.04.2025 (Annexure no. 6 and 8 to this writ petition).

(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to grant him compassionate appointment as expeditiously as possible."

II. Facts established from the record

2. The father of the petitioner was dismissed from service by order dated 10.05.2006. The father of the petitioner instituted proceedings before the labour court against the order of dismissal. The labour court by award dated 16.10.2015 set aside the dismissal of the petitioner's father from service and directed reinstatement with full backwages and all consequential benefits attached to the post. The award of the labour court was assailed before this Court by instituting Writ C No. 53989 of 2016 (D.G.M. (Appellate Authority) State Bank of India Vs. Central Govt. Industrial Tribunal Cum Labour Court). The writ petition is still pending. Steps to expedite the hearing of the said writ petition are not disclosed in the writ petition. The following order was passed in the aforesaid writ petition:

"Till the next date of listing, effect and operation of the impugned award dated 16 October 2015, published on 28 April 2016, shall remain stayed provided the respondent workman is reinstated within one month from date and 25% of his back wages is released within three months thereafter.

It is clarified that the sum released in favour of the workman and the balance back wages shall be subject to final decision of the writ petition."

3. The father of the petitioner died in harness on 08.12.2019. An application for grant of appointment on compassionate grounds was preferred on behalf of the petitioner by his mother on 24.01.2020. Subsequently another application was made on 04.04.2025 for the same purpose.

4. The petitioner claims that he had made several representations over the years for compassionate appointment.□□

III. Appointment on compassionate grounds : Rationale & Purpose

5. The process of appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees.

6. The sole purpose of compassionate ground appointments is to provide prompt financial succour to a family of the deceased government employee which faces sudden financial destitution as a result of the death of the employee in harness. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

7. Appointments on compassionate grounds give a sheltered entry to the dependents of a deceased employee into government service without the rigors of an open selection procedure. The competitive merit of candidates is of no relevance since the appointments are made without adopting the public selection procedure. Norms of recruitment are completely relaxed for appointment on compassionate grounds. However the law requires the applicants to possess minimum qualifications for the posts.

8. Considering the aforesaid limitations of compassionate ground appointments, it has been held by good authority that there is no vested right to an appointment on compassionate grounds. Further, the right to compassionate ground appointment is derived only from specific provisions in this regard and the same have to be strictly adhered to. An unduly liberal view while interpreting the aforesaid rules may make the appointments vulnerable to reproach by the equality clause of the Constitution.

9. Appointments on compassionate grounds made in violation of the Rules governing such appointments or without examination of relevant factors as per law, or in the teeth of holdings of Constitutional Courts in point will shear the cloak of legality from these appointments and will reduce the said appointments to a class of hereditary appointments. Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment.

IV. Delay in compassionate appointment

10. It is also important to state that the appointment on compassionate grounds is not intended to create a windfall for the kin of the deceased but only provide means of the family of the deceased to keep the kitchen fire burning.

11. The legislative intent and judicial rationale for appointment on compassionate grounds is subserved only when an application for appointment on compassionate grounds is made in quick time and in near proximity to the death of the employee. No delay can be brooked in the applications for grant of appointment

on compassionate grounds. Constitutional law holdings regarding compassionate ground appointment mandate that dependents claimants have to be vigilant about their rights and ought to diligently prosecute their application for appointment. Delay in filing of the application or apathy in prosecution of the case before the Court for grant of compassionate appointment has not been countenanced by the Courts. Delay in filing of the application for appointment, or laches in instituting a writ petition before the Court raises a presumption that financial crises being faced by the family of the deceased has ceased to exist.

12. The delays can be of two types namely delay in filing the application and neglecting to prosecute the same before the authorities, and laches in invoking the writ jurisdiction after failure of the authorities to process the application in an expeditious time frame. Delays of both the aforesaid categories are fatal to the legitimacy of the claim for compassionate appointments. In such cases the rationale for compassionate appointment does not survive due to the said delays or laches. Infact pretty often such delays reflect an entitlement culture which has taken root by an over liberal attitude in grant of compassionate appointment. Further filing such applications or writ petition after an inordinate delay also evidence a misplaced view that such appointments are a vested right. The law has clearly set its face against the delays of both kinds as discussed earlier.

V. Delay in the facts of this case

13. In the facts and circumstances of the case the petitioner has sought to explain the delay by filing a supplementary affidavit. According to the petitioner he had passed intermediate in the year 2017. He was enrolled in BA course in Prof. Rajendra Singh (Rajju Bhaiya) University of Prayagraj in the academic year 2018-19. The petitioner completed his graduation in the year 2021. Thereafter as per the petitioner he was involved in litigation against his uncle in the year 2022 which is still pending.

14. According to the petitioner the scheme which is applicable to his case is the revised scheme for grant of appointment on compassionate grounds in State Bank of India. The scheme was promulgated on 16.03.2021. The relevant provision relied on for supporting the argument that there are no laches on the part of the petitioner is clause 9 of the e-Circular dated 16.03.2021. Clause 9 is extracted hereunder for ease of reference:

"9. Time Limit For Considering Applications-

Request for compassionate appointment should be submitted within six months from the date of death/retirement on medical grounds due to incapacitation before reaching the age of 55 years.

In some cases the dependent family may not be ready to submit the application for compassionate appointment in view of the fact that the dependent child is minor and may wait to attain the eligible age and qualification etc. required for the position under compassionate ground. When the dependent child is in the midst of some higher course, he/she may require some ore time to complete the course before applying for the job under compassionate ground. While considering such belated requests, it should be kept in

view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. In this connection, five years shall be the outside limit in all cases and no proposals for compassionate appointment of a dependent will be considered after five years from the date of 'death of employee'/ 'retirement of the employee on medical ground'

15. The scheme contemplates that the application for compassionate grounds appointment is liable to be submitted within six months from the date of death of the employee.

16. The first application was made on behalf of the petitioner within the aforesaid time period. The second application/reminder was admittedly made after a period of five years. The provision in the scheme which gives some latitude to the employee for condoning the delay have to be read in light of the holdings of constitutional courts and in the facts and circumstances of each case so as to ensure that eligible claimants are not denied their just dues or rights under the scheme. The scheme envisages that the dependent child should be in the midst of some higher (educational) course, and may require some more time to complete the course before applying for job under compassionate ground. The said precondition for enlargement of time for applying for compassionate appointment or grant of such appointment is not satisfied in this case as the succeeding paragraphs will demonstrate.

17. Admittedly the petitioner has completed graduation in the year 2021. He did not pursue any higher course thereafter. Thereafter almost a half decade was spent by him in family litigation. The fact is that the petitioner showed no sense of urgency for approaching the Court, but was instead continuously engaged himself in family litigation. The conduct of the petitioner gives rise to the inference that immediate financial crises which the family may have sustained as a result of the death of the employee in the year 2019 had long ceased to exist. In wake of the above said facts the clause in the compassionate appointment scheme relied upon by the petitioner is not applicable to the facts of this Case and the petitioner cannot benefit from the same.

12. This Court in **Ashish Yadav Vs. Managing Director, UP State Road Transport Corporation and others** rendered in **Writ A No. 17483 of 2024)** stated as under:

"25. A Division Bench of this Court after citing authorities in point also concluded that financial penury ceases to exist in case an application was made long years after the death of the employee in the case of Smt. Sonal Laviniya and another vs. Union of India and another reported at 2003 (5) AWC 4070:

"38. The purpose of providing such an employment has been to render the financial assistance to the family, which has lost the bread earner immediately after the death of the employee. If the application has been filed after expiry of 9 years the element of immediate need

stood evaporated and there was no occasion for the respondents to consider the case of the petitioner for such a relief. The observation made by the learned Tribunal are in consonance with the law laid down by the Hon'ble Apex Court and no exception can be taken out."

19. More recently the Supreme Court in **Canara Bank v. Ajithkumar G.K.** reported at **2025 SCC OnLine SC 290** while examining the impact on the legality of appointment on compassionate grounds held as under:

"11.(j). An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, **the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.**

(emphasis supplied)

27. Lapse of time could, however, be a major factor for denying compassionate appointment where the claim is lodged belatedly. A presumption is legitimately drawn in cases of claims lodged belatedly that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. However, what would be a reasonable time would largely depend on the policy/scheme for compassionate appointment under consideration. If any time limit has been prescribed for making an application and the claimant applies within such period, lapse of time cannot be assigned as a ground for rejection."

20. As stated earlier in the facts of this case the petitioner had undoubtedly made the application within the prescribed time but had approached this Court after an inordinate delay. The delay in approaching the Court was deliberate choice made by the petitioner and not a fait accompli forced by penurious circumstances. On the contrary as seen earlier the petitioner had busied himself in litigation for long years with his family members. He was always aware of his rights and possessed the wherewithal to approach this Court as well. In these circumstances the laches on the part of the petitioner in approaching this Court are not liable to be condoned. The writ petition is barred by delay and laches.

21. The second aspect as to whether filing of representations would suffice to condone the laches in instituting the writ petition will now be examined. The law is well settled that mere filing of representations over long years or even instituting a writ petition to decide the same after a long delay does not condone the laches on the part of the litigation. The discussion has advantage of good authorities in point.

22. The Supreme Court in **C. Jacob v. Director of Geology and Mining and another reported at (2008) 10 SCC 115** held as under:

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations

unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

23. The Supreme Court in **Gian Singh Mann v. High Court of Punjab and Haryana and another reported at (1980) 4 SCC 266** held as under:

"3. In regard to the petitioner's claim for promotion to the Selection Grade post in the Punjab Civil Service (Judicial Branch) with effect from 1st November, 1966, and to a post in the Punjab Superior Judicial Service with effect from 1st May, 1967 on the basis that a post had been reserved in each of the services for a member of the Scheduled Castes, it seems to us that the claim is grossly belated. The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground. It is not necessary, in the circumstances, to consider the further submission of the respondents that the provision on which the petitioner relies as the basis of his claim is concerned with the appointment only of members of the Scheduled Castes to posts in the Punjab Superior Judicial Service and not to recruitment by promotion to that service."

24. This Court has to be conscious of the fact that constitutional law holdings have repeatedly cautioned that compassionate grounds appointments are not vested right nor can they be claimed or granted as a matter of course. Misplaced sympathy or an overliberal approach in construing the issue of delay without regard to the facts and circumstances of the case will denude the very legality of the compassionate ground appointment. If compassionate appointments are allowed to be claimed without regard to the holdings of constitutional courts, such appointments will end up the hereditary appointment and will amount to reservation without the authority of law. Furthermore any such appointments made out of misplaced sympathy will preclude a more eligible claimant from applying for the appointment through the open source of recruitment and on competitive merit.

25. The respondent bank is certainly precluded from denying the compassionate grounds appointment on the grounds of delay in view of **Ajit Kumar (supra).** However, this Court can always look into the issue of delay and laches on the part of the petitioner and decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

26. In the facts and circumstances of this case, this Court has not condoned the delay and laches on the part of the petitioner, but equally the Court cannot countenance the apathy on part of the respondent bank. Costs of Rs. 100,000/- are imposed upon the respondent bank for failing to decide the representation of the petitioner in an expeditious time frame in light of the charter of their duties. The costs shall be paid to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

27. In wake of the preceding discussions, the writ petition is liable to be dismissed and is dismissed.

(2025) 9 ILRA 1012
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.09.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ - A No. 6421 of 1993

Arvind Nath Tewari N- State ...Petitioner
Versus
Cane Commissioner U.P. Lucknow/ Chairman & Ors. ...Respondents

Counsel for the Petitioner:
M. Afzal, Dileep Kumar Srivastava, Jaideep Srivastava

Counsel for the Respondents:
C.S.C., Anad Shanker Asthana, Paramanand Asthana

Issues for consideration

Whether the appointment on a higher post (than the post given) on compassionate grounds, can be said to be in violation of the Rules?

Headnotes

A. Service Law - Compassionate appointment is an exception to the rule of equality in public employment and the appointment is only to be made in accordance with the rules which in fact has been done in the instant case. (Para 26)

On account of death of petitioner's father he had been appointed on compassionate grounds as seasonal clerk vide order dated 17.1.1987. The petitioner finding himself qualified for a higher post i.e. Assistant Accountant / Clerk sent an application for being appointed on the said post. The application was forwarded by the Society wherein it was clearly indicated that the petitioner was working on a seasonal post and that he has moved an application for being appointed as per his qualification on a higher post. (Para 22)

Vide order dated 21.1.1991 passed by the respondent no. 2 the petitioner was appointed on compassionate grounds as Assistant Accountant / Clerk in the pay scale of Rs 950-1500. Subsequently vide order dated 14.12.1992 the petitioner was reverted to the post of seasonal clerk on the ground that (a) due selection process has not been followed while appointing him as Assistant Accountant / Clerk and (b) the petitioner was already working on compassionate grounds as seasonal clerk and consequently his appointment on compassionate grounds again has been done in violation of rules and without seeking approval of the competent authority. The representation filed by the petitioner against the cancellation order was also rejected vide order dated 22.6.1993. Being aggrieved the petitioner challenged the orders dated 14.12.1992 and 22.6.1993 before this Court in the instant petition. This Court vide order dated 18.8.1993 stayed the operation of the orders dated 14.12.1992 and 22.6.1993 and on the basis of the said order the petitioner continued to work as an Assistant Accountant / Clerk and thereafter retired on attaining the age of superannuation on 31.5.2021. However the retiral dues have not been given by the respondents, either of the post of seasonal clerk or the post of Assistant Accountant / Clerk. (Para 23)

B. The application filed by the petitioner was duly acceded by respondent no. 2 and the petitioner was appointed as Assistant Accountant / Clerk vide order dated 21.1.1991. The petitioner, after his appointment, continued to work on the higher post and thereafter retired on attaining the age of superannuation while working on the said post. **It is not the case of the respondents that any fraud or misrepresentation was committed by the petitioner while seeking his appointment on compassionate grounds on a higher post**. (Para 25)

C. When he was appointed on a higher post and the fact that the approval was to be sought

from the competent authority by the respondent no. 2 in which the petitioner had no role and thus **the fault on the part of the respondent no. 2 in not seeking approval of the competent authority, if at all, cannot be placed on the shoulders of the petitioner so as to have enabled the respondents to have cancelled the appointment order of the petitioner.** (Para 27)

Writ petition allowed. (E-4)

Case Law Cited:

1. Union of India and another Vs. Raghuwar Pal Singh, (2018) 15 SCC 463 (Para 16)
2. State of Uttar Pradesh Vs. Premlata, (2022) 1 SCC 30 (Para 18)
3. Shiv Dutt Sharma Vs. State of U.P. and others, 2025 SCC OnLine All 252 (Para 20)
4. General Manager, State Bank of India and others Vs. Anju Jain, 2008(8) SCC 475) (Para 26)

List of Keywords

Service, salary, retiral benefits, qualification, selection, compassionate appointment.

Appearances for Parties

For Appellant: M Afzal, Dileep Kumar Srivastava, Jaideep Srivastava

For Respondent: C.S.C, Anand Shanker Asthana, Paramanand Asthana

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

1. Heard learned counsel for the petitioner, Shri Parmanand Asthana, learned counsel for the respondents no. 1 to 4 and Shri Anand Shankar Asthana, learned counsel for the respondent no. 5.

2. Learned counsel for the parties contend that the issue involved in WRIT - A No. - 6421 of 1993 and WRIT - A No. - 8574 of 2023 are the same. As such, the Court proceeds to hear both the writ petitions together. For convenience, facts of Writ A No. 6421 of 1993 are being taken.

3. By means of the instant petition the petitioner has prayed for quashing of order dated 14.12.1992, passed by the respondent no. 2 and 22.6.1993 passed by the respondent no. 1, copies of which are annexure 4 and 8 respectively to the writ petition. Further prayer is for a writ of mandamus commanding the respondents to allow the petitioner to continue on the post of Assistant Accountant and to pay his salary regularly each month.

4. In Writ A No. 8574 of 2023 the prayer is for a writ of mandamus commanding the respondents to pay the retiral benefits to the petitioner within specified time.

5. The case set forth by learned counsel for the petitioner is that the petitioner?s father namely Shri Ram Kishan Tiwari was working as a seasonal clerk under the respondent no. 5 Society who died in harness. The petitioner staked his claim for being appointed on compassionate grounds. The respondents vide order dated 17.1.1987, a copy of which is annexure CA-1 to the counter affidavit filed on behalf of respondents no. 1 to 4, appointed the petitioner as a seasonal clerk. It has been pointed out by Shri Parmanand Asthana that in the proposal that had been sent by the Committee of Management of the Society the claim of the petitioner was required to be considered on compassionate grounds which in fact resulted in order dated 17.1.1987 appointing the petitioner as a seasonal clerk.

6. Subsequent thereto, the petitioner finding himself having higher qualifications than that prescribed for the post of seasonal clerk and being fit for being appointed on the post of Assistant

Accountant / Clerk sent an application for being appointed on the said post. A copy of the application is annexure A2A to the writ petition. The said application was forwarded by the society vide its applications, copies of which are annexures A2B and A2C the writ petition. The perusal of the said applications would indicate that the society has clearly indicated that the petitioner was working on a seasonal post and that he has moved application for being appointed as per his qualification on a higher post. In pursuance thereto vide order dated 21.1.1991, a copy of which is annexure 3 to the writ petition, passed by the respondent no. 2 the petitioner was appointed on compassionate grounds as Assistant Accountant / Clerk in the pay scale of Rs 950-1500.

7. Later, vide order dated 14.12.1992, a copy of which is annexure 4 to the writ petition, the petitioner was reverted to the post of seasonal clerk on the ground that (a) due selection process has not been followed while appointing him as Assistant Accountant / Clerk, (b) the petitioner was already working on compassionate grounds as seasonal clerk and (c) the appointment of the petitioner had been done in violation of rules without seeking approval from the competent authority.

8. The petitioner submitted a representation against the same which has been rejected vide order dated 22.6.1993, a copy of which is annexure 8 to the writ petition, by the Cane Commissioner i.e. respondent no. 1.

9. Being aggrieved by both the orders, the instant petition is filed.

10. This Court vide order dated 18.8.1993 stayed the operation of the orders dated 14.12.1992 and 22.6.1993. On the basis of the said stay order, the petitioner continued to work as Assistant Accountant / Clerk. The writ petition itself was dismissed for non prosecution on 30.11.2012. Despite that, the petitioner continued to work as Assistant Accountant / Clerk and retired on attaining the age of superannuation on 31.5.2021. When the petitioner was not paid any retiral dues he was constrained to file Writ A no. 8574 of 2023 praying for being paid his retiral dues. Subsequent thereto the Writ A No. 6421 of 1993 has been restored on 21.5.2025.

11. It is admitted by learned counsel for the respondents that no retiral dues have been paid to the petitioner either of the post of seasonal clerk or of the post of Assistant Accountant / Clerk.

12. While raising a challenge to the orders impugned dated 14.12.1992 and 22.6.1993, the argument of learned counsel for the petitioner is that there has been no concealment on his part in securing appointment of Assistant Accountant / Clerk in as much as in the application that he had moved before the competent authority it was specifically indicated that he was working as a seasonal clerk and that he should be given some post as per his qualification which application was duly forwarded by the Society and was acceded to which has resulted in he being appointed vide order dated 21.1.1991 as Assistant Accountant / Clerk and consequently the reversion order by indicating that as the petitioner had already been appointed on compassionate grounds as seasonal clerk and there would not be any occasion for he to be again appointed on compassionate grounds as Assistant Accountant /Clerk is patently misconceived.

13. The further argument is that once the appointment order was issued as Assistant Accountant / Clerk the petitioner joined and started working as Assistant Accountant / Clerk and thereafter despite the reversion order dated 14.12.1992 and on the basis of the stay order granted by this Court dated 18.8.1993 the petitioner continued to function as an Assistant Accountant / Clerk and thereafter retired on attaining the age of superannuation on 31.5.2021 and the fact that there was no concealment on his part in he having been appointed as Assistant Accountant / Clerk consequently merely because respondent no. 5 did not get the approval of the Committee of Management of the Regional Cane Service Authority Gorakhpur and the petitioner had no role in getting the said approval and once he has continued all along and discharged the duty of the post of Assistant Accountant / Clerk consequently it would be too late in the day now, having been appointed in the year 1991, for the respondents to aver that the approval of the competent authority was not given to the appointment of the petitioner.

14. The other argument is that a perusal of the other ground taken in the order impugned indicates that due selection process was not followed for making appointment on the post of Assistant Accountant / Clerk. In this regard the argument is that it is settled position of law that compassionate appointment is an exception to the main recruitment process and once the petitioner had been appointed on compassionate grounds consequently the respondents cannot say that the selection process as was provided for making appointment on the said post would be applicable in as much as the petitioner had been appointed on compassionate grounds and not as direct recruit thus it is contended that the reversion order merits to be set aside and the respondents be directed to pay all the retiral dues considering the service rendered by the petitioner as Assistant Accountant / Clerk.

15. Per contra, Shri Anand Shankar Asthana as well as Shri Parmanand Asthana, learned counsels for the respondents argue that once the petitioner had only been appointed on compassionate grounds in the year 1987 consequently there was no occasion for him to be again appointed on compassionate grounds as has been done in the instant case in the year 1991. Upon the said facts been discovered, the reversion order dated 14.12.1992 had been passed and even the representation filed against the same was also rejected by the competent authority vide order dated 22.6.1993.

16. The further argument of learned counsel for the respondents is that once there was no approval given by the competent authority i.e. Committee of Management of the Regional Cane Service Authority Gorakhpur for the appointment of the petitioner on the post of Assistant Accountant / Clerk consequently no error has been committed by the respondents in reverting him from the said post of Assistant Accountant Clerk and sending him back to the original post which he was holding i.e. seasonal clerk and there was no requirement of giving any opportunity of hearing as per the law laid down by Hon'ble Supreme Court in the case of **Union of India and another vs Raghuwar Pal Singh, (2018) 15 SCC 463.**

17. Learned counsel for the respondents have also argued that the petitioner did not raise any challenge to his compassionate appointment on the post of

seasonal clerk and thus it would be deemed that he has accepted his appointment as seasonal clerk and consequently there would be no occasion for the respondents to have appointed him on compassionate grounds on the post of Assistant Accountant / Clerk.

18. Another argument raised by learned counsel for the respondents is that as per law laid down by Hon'ble Supreme Court in the case of **State of Uttar Pradesh vs Premlata (2022) 1 SCC 30** a person can only be given appointment on compassionate grounds considering the post that was held by the deceased employee on the basis of which the dependents claim appointment.

19. The argument is that as the father of the petitioner was only a seasonal clerk consequently the petitioner could not have been appointed as an Assistant Accountant / Clerk and he was correctly given appointment on the post of seasonal clerk.

20. Learned counsel for the respondents have also placed reliance on a judgement of Division Bench of this Court in the case of **Shiv Dutt Sharma vs State of U.P. and others, 2025 SCC OnLine All 252** to contend that in similar circumstances this Court has upheld the cancellation of a subsequent order of compassionate appointment and thus it is contended that merely because the petitioner continued to work as Assistant Accountant / Clerk and retired on attaining the age of superannuation on 31.5.2021 he would not be entitled for any retiral dues on the basis of the working as Assistant Accountant / Clerk.

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

22. From perusal of the record it emerges that on account of death of petitioner?s father he had been appointed on compassionate grounds as seasonal clerk vide order dated 17.1.1987. The petitioner finding himself qualified for a higher post i.e. Assistant Accountant / Clerk sent an application for being appointed on the said post. The application was forwarded by the Society wherein it was clearly indicated that the petitioner was working on a seasonal post and that he has moved an application for being appointed as per his qualification on a higher post.

23. Vide order dated 21.1.1991 passed by the respondent no. 2 the petitioner was appointed on compassionate grounds as Assistant Accountant / Clerk in the pay scale of Rs 950-1500. Subsequently vide order dated 14.12.1992 the petitioner was reverted to the post of seasonal clerk on the ground that (a) due selection process has not been followed while appointing him as Assistant Accountant / Clerk and (b) the petitioner was already working on compassionate grounds as seasonal clerk and consequently his appointment on compassionate grounds again has been done in violation of rules and without seeking approval of the competent authority. The representation filed by the petitioner against the cancellation order was also rejected vide order dated 22.6.1993. Being aggrieved the petitioner challenged the orders dated 14.12.1992 and 22.6.1993 before this Court in the instant petition. This Court vide order dated 18.8.1993 stayed the operation of the orders dated 14.12.1992 and 22.6.1993 and on the basis of the said order the petitioner continued to work as an Assistant Accountant / Clerk and thereafter retired on attaining the age of superannuation on 31.5.2021. However the retiral dues have

not been given by the respondents, either of the post of seasonal clerk or the post of Assistant Accountant / Clerk.

24. The contention of learned counsel for the respondents is that once the petitioner had already been appointed on the post of seasonal clerk on compassionate grounds there could not be any occasion for he to be appointed on compassionate grounds again vide order dated 14.12.1992 more particularly when there was no approval from the competent authority pertaining to his appointment on higher post. It is also contended that the appointment of the petitioner on a higher post was in violation of the Rules.

25. The aforesaid grounds as taken by the respondents are found to be patently fallacious and misconceived. The reasons are not far to seek. The application was filed by the petitioner seeking his compassionate appointment on higher post as per his qualification which was duly forwarded by the society indicating the petitioner having been appointed on compassionate grounds on seasonal post and he seeking his compassionate appointment on a higher post which was duly acceded by respondent no. 2 and the petitioner was appointed as Assistant Accountant / Clerk vide order dated 21.1.1991. The petitioner, after his appointment, continued to work on the higher post and thereafter retired on attaining the age of superannuation while working on the said post. It is not the case of the respondents that any fraud or misrepresentation was committed by the petitioner while seeking his appointment on compassionate grounds on a higher post rather, as already indicated above, the application was duly forwarded by the Society indicating the fact of the petitioner having earlier been appointed on compassionate grounds and the same found favour with the respondent no. 2 when the appointment order of the petitioner was issued on a higher post. Thus the grounds taken by the respondents are misconceived and are accordingly rejected.

26. So far as the ground that the rules were not followed while making appointment on the post of Assistant Accountant / Clerk suffice to state that compassionate appointment is an exception to the rule of equality in public employment and the appointment is only to be made in accordance with the rules which in fact has been done in the instant case (see **General Manager, State Bank of India and others vs Anju Jain, 2008(8) SCC 475).**

27. The ground that the appointment order was not approved by the competent authority looses all relevance at this stage of time considering the fact that again, no fraud or misrepresentation was committed by the petitioner when he was appointed on a higher post and the fact that the approval was to be sought from the competent authority by the respondent no. 2 in which the petitioner had no role and thus the fault on the part of the respondent no. 2 in not seeking approval of the competent authority, if at all, cannot be placed on the shoulders of the petitioner so as to have enabled the respondents to have cancelled the appointment order of the petitioner. Thus the said ground is also rejected.

28. As regards the judgement of Hon'ble Supreme Court in the case of **Raghuwar Pal Singh (supra)** the same would have no applicability in the facts of the instant case in as much as the said case

was not one of compassionate appointment. Hon'ble Supreme Court has held that where an appointment order could only be issued by an authorized officer after obtaining approval of competent authority and the said appointment order having been issued by lack of authority, would be a nullity in the eyes of law. Here, the said principle would not be applicable considering the fact that compassionate appointment is an exception to the main rule and the fact that the petitioner continued to serve on the higher post after he had been appointed and has also retired on attaining the age of superannuation while working on a higher post. Thus the said judgement would have no applicability in the facts of the case.

29. So far as the judgement of Hon'ble Supreme Court in the case of **Premlata (supra) is** concerned, the same pertains to Hon'ble Supreme Court having held that the appointment of a dependent on compassionate grounds would be to a post held by the deceased employee. There cannot be any dispute to the aforesaid proposition of law as laid down by Hon'ble Supreme Court but in the instant case the respondents had already appointed the petitioner on a higher post in the year 1991 and the petitioner continued to work on the higher post till his superannuation in the year 2021 i.e. for the period of 30 years as such the aforesaid judgement would have no applicability in the facts of the instant case.

30. As regards judgement of this Court in the case of **Shiv Dutt Sharma (supra)** though the same pertains to the issue as to once a person having availed the benefit of appointment on compassionate grounds could again claim appointment on higher post on compassionate grounds, has been answered in the negative by this Court. But in the case in hand, the petitioner has already been given compassionate appointment on a higher post and he having served for more than 30 years has retired while working on a higher post and as such the said judgement would not be of any help to the respondents.

31. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The orders impugned dated 14.12.1992 and 22.6.1993, copies of which are annexure 4 and 8 to the writ petition are set aside.

32. A writ of mandamus is issued commanding the respondents to pay all retiral dues of petitioner of the post of Assistant Accountant / Clerk. Let the respondents comply with this order within a period of 8 weeks from the date of receipt of a certified copy of this order.

(2025) 9 ILRA 1018
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.09.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ - A No. 7815 of 2024

Laljee ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Satyanshu Ojha

Counsel for the Respondents:
C.S.C., Raj Kr. Singh Suryvanshi

Issues for consideration

Whether the services of an employee who acquires a disability during his/her service, are to be dispensed with or efforts are to be made by the employer for shifting him to a suitable

post and in the absence thereto, to continue him on supernumerary post until a suitable post is available?

Headnotes:

A. Service Law - Rights of Persons with Disabilities Act, 2016: Section 20(4); The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: Section 47 - Where an employee acquires a disability during his service, his services are not to be dispensed with rather efforts are to be made by the employer for shifting him to a suitable post and in the absence thereto, to continue him on supernumerary post until a suitable post is available. (Para 16)

The petitioner had been appointed as an Assistant Teacher in the year 2013 and was working under the respondents no. 6 and 7 when he suffered a brain stroke on 2.8.2016 which rendered him unable to carry out his duties. Though he submitted his joining on 20.8.2024 but he has not been permitted to join on account of report of the committee per which the petitioner is incapable of doing any teaching work. (Para 11)

As per provisions of Section 20(4) of the Act, 2016 **no government employer can dispense with or reduce in rank an employee who acquired disability during his or her service.** The proviso to Section 20(4) of the Act, 2016 provides that **if an employee after acquiring disability is not suitable for the post he is holding, he shall be shifted to some other post with same pay scale and benefits.** (Para 14)

The second proviso to Sub-section (4) of Section 20 of the Act, 2016 provides that **if it is not possible to adjust the employee against any post he can be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.** (Para 15)

Despite the claim of the petitioner of he having suffered brain stroke and medical prescriptions of the said fact have been annexed in the writ petition, no medical board has been constituted by the respondents to examine the petitioner. (Para 12)

Although no medical board had been formed, from perusal of the report of the committee dated 9.10.2024, it emerges that the said committee had been formed in pursuance of letter dated 4.10.2024 as sent by the District Inspector of Schools to the Chief Medical Officer, Barabanki, for sending a senior physician for evaluation of the petitioner. The committee's report dated 9.10.2024 would indicate that the senior physician appointed by the CMO, Barabanki was also the part of the committee. The decision of the committee and as per the medical certificate produced by the petitioner, he has not been found fit for doing teaching work. Thus **it is apparent that even the respondents on the basis of the said report of the committee are of the view that teaching work cannot be assigned to the petitioner yet at the same time considering the provisions of 20(4) of the Act 2016, alternative post has to be identified for the petitioner.** (Para 18)

Writ petition is disposed of with direction to the District Inspector of Schools Barabanki i.e. the respondent no. 5 to act in consonance with the provisions of the Act, 2016 and the law laid down by Hon'ble Supreme Court in the case of *Ch. Joseph* (*infra*) by identifying a suitable post for the petitioner with the same pay scale and service benefits. If it is not possible to adjust him on any post he be kept on a supernumerary post till a suitable post is available or he attains the age of superannuation whichever is earlier. (Para 19)

Writ petition disposed of. (E-4)

Case Law Cited:

Ch. Joseph Vs. The Telangana State Road Transport Corporation & other, 2025 LiveLaw (SC) 763 (Para 7)

List of Acts

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Rights of Persons with Disabilities Act, 2016.

List of Keywords

Service, disability, suitable post, superannuation.

Appearances for Parties:
For Appellant: Satyanshu Ojha
For Respondent: C.S.C., Raj Kr Singh Suryvanshi

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

1. Rejoinder affidavit filed today is taken on record.

2. Heard learned counsel for the petitioner, Shri Saharsh, learned Additional Chief Standing Counsel for the respondents no. 1, 2, 3 & 5 and Shri R K Singh Suryavanshi, learned counsel for the respondent no. 4.

3. Despite notice being issued to respondents no. 6 and 7, none responds on their behalf. As per office report dated 24.10.2024, the notice is deemed sufficient.

4. The contention of learned counsel for the petitioner is that after he had been appointed as Assistant Teacher in the year 2013 he suffered a brain stroke on 2.8.2016 which rendered him unable to carry out his duties. After attaining some semblance of fitness, the petitioner claims to have submitted his joining on 20.8.2024 but he has not been permitted to join.

5. In the meanwhile the respondents formed a committee to examine the case of the petitioner which has submitted its report dated 9.10.2024, a copy of which is annexure SCA-8 to the short counter affidavit, per which it has been indicated that as the petitioner is unable to carry out teaching work on account of not being able to write or to speak, as such teaching work cannot be taken from him and he cannot be permitted to join.

6. The argument of learned counsel for the petitioner is that medical leave is still outstanding and the respondents may be directed to sanction medical leave and further certain benefits flow out of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Rights of Persons with Disabilities Act, 2016 per which the respondents may consider the petitioner for being appointed on an equivalent post.

7. In this regard learned counsel for the petitioner has placed reliance on judgement of Hon'ble Supreme Court in the case of **Ch. Joseph vs The Telangana State Road Transport Corporation & other, 2025 LiveLaw (SC) 763** to contend that Hon'ble Supreme Court has considered the applicability of the Act, 1995 and has laid down the principles to be followed where an employee has acquired disability during his employment.

8. Learned counsel for the petitioner states that although in the said judgement, Hon'ble Supreme Court has considered Section 47 of the Act, 1995 yet now the said section is pari materia to section 20(4) of the Act, 2016 and thus it is prayed that the respondents be directed to consider the petitioner for alternative employment and also to pay arrears of salary with effect from 1.10.2021 after sanctioning the same as medical leave with pay.

9. On the other hand, learned counsel for the respondents on the basis of the averments contained in the counter affidavit have argued that the petitioner remained absent from the institution since 1.10.2021 and after a period of 3 years made representation on 30.8.2024 for the

purpose of being permitted to join which has not found favour with the respondents on account of he having absented himself.

10. Moreover, as per the report of the committee dated 9.10.2024, a copy of which is annexure 8 to the short counter affidavit, the petitioner, on account of his medical condition has not been found fit for any teaching work and consequently he cannot be permitted to join on account of being unable to speak, read and write.

11. Having heard learned counsel for the parties and having perused the record it emerges that admittedly the petitioner had been appointed as an Assistant Teacher in the year 2013 and was working under the respondents no. 6 and 7 when he suffered a brain stroke on 2.8.2016 which rendered him unable to carry out his duties. Though he submitted his joining on 20.8.2024 but he has not been permitted to join on account of report of the committee per which the petitioner is incapable of doing any teaching work.

12. Despite the claim of the petitioner of he having suffered brain stroke and medical prescriptions of the said fact have been annexed in the writ petition, no medical board has been constituted by the respondents to examine the petitioner.

13. In this regard, it would be apt to consider the provisions of Section 20 of the Act, 2016, which for the sake of convenience is reproduced below:

"20. Non-discrimination in employment.-

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

14. As per provisions of Section 20(4) of the Act, 2016 no government employer can dispense with or reduce in

rank an employee who acquired disability during his or her service. The proviso to Section 20(4) of the Act, 2016 provides that if an employee after acquiring disability is not suitable for the post he is holding, he shall be shifted to some other post with same pay scale and benefits.

15. The second proviso to subsection (4) of Section 20 of the Act, 2016 provides that if it is not possible to adjust the employee against any post he can be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

16. Thus from perusal of the provisions of the Act, 2016 it is apparent that where an employee acquires a disability during his service, his services are not to be dispensed with rather efforts are to be made by the employer for shifting him to a suitable post and in the absence thereto, to continue him on supernumerary post until a suitable post is available.

17. Hon'ble Supreme Court while considering the provisions of the Act, 1995 in the case of **Ch. Joseph (supra)** has held as under:

33. This principle was further extended in Mohamed Ibrahim v. The Chairman and Managing Director & Ors, wherein one of us (Aravind Kumar, J.) was party to the judgment. The Court held that even if colour blindness does not fall within the statutory definition of "disability" under Section 2(i) or "persons with disability" under Section 2(t) of the Rights of Persons with Disabilities Act, 2016, the employer is still bound to provide reasonable accommodation and cannot terminate employment without exploring alternate roles. This Court observed: "19. The Act contains a general non-discriminatory provision:

"3. Equality and non-discrimination.

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability. (5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

20. The twin conditions of falling within defined categories, and also a threshold condition of a minimum percentage, of such disabilities, in fact are a barrier. The facts of this case demonstrate that the appellant is fit, in all senses of the term, to discharge the duties attached to the post he applied and was selected for. Yet, he is denied the position, for being "disabled" as he is colour blind. At the same time, he does not fit the category of PWD under the lexicon of the universe contained within the Act. These challenges traditional understandings of

what constitute "disabilities". The court has to, therefore, travel beyond the provisions of the Act and discern a principle which can be rationally applied.

21. In Jeeja Ghosh v. Union of India, [2016] 4 SCR 638. this court observed: "40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation."

22. Ravinder Kumar Dhariwal v. Union of India, 2021 (13) SCR 823 highlighted on the right to equality and underlined the two aspects:formal equality and substantive equality. It stated that substantive equality aims at producing equality of outcomes, and in the context of the case, observed that the "principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals must be reasonably accommodated based on their individual capacities." The court recollected Vikas Kumar v. Union Public Service Commission, 2021 (12) SCR 311, which held as follows: "The principle of reasonable accommodation acknowledges that if disability" should be remedied and opportunities are "to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individual's dignity and worth is respected."

23. It was also noted that provisions of Chapters VII and VIII of the Act are in furtherance of the principle of reasonable accommodation which is a component of the guarantee of equality. This has been recognised by a line of precedent. This court, in multiple cases has held that the principle of reasonable differentiation, recognising the different needs of persons with disabilities is a facet of the principle of equality.

24. The significant impact of Vikash Kumar (supra) is that the case dealt with a person with a chronic neurological condition resulting in Writer's Cramp, experiencing extreme difficulty in writing. He was denied a scribe for the civil services exam by the UPSC, because he did not come within the definition of person with benchmark disability (40% or more of a specified disability). This court, rejected this stand, and held him to be a person with disability. It was also stated that the provision of scribe to him fell within the scope of reasonable accommodation. The Court said:

" the accommodation which the law mandates is 'reasonable' because it has

to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence?"

25. The appellant is, for all purposes, treated as a person with disability, but does not fall within the categories defined in the Act, nor does he possess the requisite benchmark eligibility condition. The objective material on the record shows that the colour vision impairment is mild. Yet, TANGEDCO's concerns cannot be characterised as unreasonable. However, TANGEDCO is under an obligation to work under the framework of "reasonable accommodation", which is defined by Section 2(y) as follows:

(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;.."

26. Reasonable accommodation thus, is "appropriate modification and adjustments" that should be taken by the employer, in the present case, without that duty being imposed with "disproportionate or undue burden".

34. Similarly, in Ravinder Kumar Dhariwal v. Union of India and others, the Court reaffirmed that reasonable accommodation is a means to achieve substantive equality, and obligates the employer to assess each case individually, based on the employee's residual functional ability and not just on formal disability classifications.

35. When a disability is acquired in the course of service, the legal framework must respond not with exclusion but with adjustment. The duty of a public employer is not merely to discharge functionaries, but to preserve human potential where it continues to exist. The law does not permit the severance of service by the stroke of a medical certificate without first exhausting the possibility of meaningful redeployment. Such obligation is not rooted in compassion, but in constitutional discipline and statutory expectation."

[emphasis by Court]

18. Although no medical board had been formed, from perusal of the report of the committee dated 9.10.2024, it emerges that the said committee had been formed in pursuance of letter dated 4.10.2024 as sent by the District Inspector of Schools to the Chief Medical Officer, Barabanki, a copy of which is annexure 7 to the short counter affidavit, for sending a senior physician for evaluation of the petitioner. The committee's report dated 9.10.2024 would indicate that the senior physician appointed by the Chief Medical Officer, Barabanki was also the part of the committee. The decision of the committee also indicates that opinion has been given by the senior physician and the other members of the committee whereby as per the medical certificate produced by the petitioner he has not been found fit for doing teaching work. Thus it is apparent that even the respondents on the basis of the said report of the committee are of the view that teaching work cannot be assigned to the

petitioner yet at the same time considering the provisions of 20(4) of the Act 2016, alternative post has to be identified for the petitioner. This is also as per the law laid down by Hon'ble Supreme Court in the case of **Ch. Joseph (supra**).

19. Keeping in view the aforesaid discussion, writ petition is disposed of with direction to the District Inspector of Schools Barabanki i.e. the respondent no. 5 to act in consonance with the provisions of the Act, 2016 and the law laid down by Hon'ble Supreme Court in the case of **Ch. Joseph (supra)** by identifying a suitable post for the petitioner with the same pay scale and service benefits. If it is not possible to adjust him on any post he be kept on a supernumerary post till a suitable post is available or he attains the age of superannuation whichever is earlier.

20. Let action in this regard be taken by the respondent no. 5 within a period of 4 weeks from the date of receipt of a certified copy of this order.

21. The other benefits as flow out from the order being passed by the District Inspector of Schools in pursuance of this judgement would be accorded to the petitioner within next six weeks of the order passed by the District Inspector of Schools.

22. The period from the date of absence of the petitioner till an order is passed in pursuance of this judgement of alternative appointment, shall be regularized by the respondents as per rules.

(2025) 9 ILRA 1025
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.09.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ - A No. 9033 of 2024
Connected with
Writ - A No. 6566 of 2023

Rakesh Kumar Nayak ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Rishi Raj

Counsel for the Respondents:
C.S.C., Raj Kr. Upadhyaya

Issues for consideration

How far the departmental proceedings are justified if the incident pertains to the year 2015 and a charge-sheet has been issued to petitioner for the first time after almost nine years in 2024, when it would be virtually impossible for him to defend himself by production of any documentary evidence due to passing of nine years?

Headnotes

A. Service Law - U.P. Government Servants (Discipline and Appeal) Rules, 1999: Rule 3 - In case delay in initiation of departmental proceedings is unexplained, prejudice to the delinquent employee is writ large on the face of record. It is evident that in case of such delay in initiation of departmental proceedings, as in the present case, where nine years have elapsed from the date of incident to issuance of charge-sheet, it would be virtually impossible for petitioner to garner documents and evidence in his support. (Para 20)

With regard to delay in initiation of departmental proceedings against petitioner, it is evident that allegations as indicated in the charge-sheet pertain to the year 2015. It is admitted in the counter affidavit that for the first time a show cause notice was issued to petitioner after almost six years on 16.11.2021 for awarding of censure entry under Rule-3 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999, and for withholding of integrity. **There is no explanation as to why**

the first show cause notice was issued to petitioner only after six years of the date of incident. (Para 16)

It is also evident that subsequently decision was taken for initiating departmental proceedings whereafter the charge-sheet dated 24.05.2023 was prepared but due to certain anomalies therein, an amended charge-sheet dated 14.11.2024 was issued on 26.11.2024. Here again, **there is no narration or any explanation as to why the opposite parties took a further three years for initiating departmental proceedings in terms of Rule 7 of the Rules of 1999 despite the fact that pleadings have been made in writ petition on the ground that departmental proceedings were initiated with delay.** (Para 17)

The only allegation leveled against petitioner is of negligence, which does not amount to misconduct as also for unexplained delay in initiation of departmental proceedings, the same are clearly vitiated for being against judgements propounded by Hon'ble Supreme Court. (Para 21)

Writ Petition No. 9033 of 2024 is allowed.

Writ-A No.6566 of 2023 has been filed seeking only direction to the opposite parties to promote petitioner from the post of Deputy Superintendent of Police to the post of Additional Superintendent of Police (Pay Scale of Rs. 15600-39100, Grade Pay Rs.7600/- revised pay scale Matrix Pay Level-12 Rs.78800-209200) with all consequential benefits w.e.f. 7.1.2022 to 13.01.2023, from the date, when similarly situated persons/juniors to the petitioner were promoted on the post of Additional Superintendent of Police. (Para 26)

In view of Writ–A No.9033 of 2024 being allowed, liberty is granted to petitioner to make a fresh representation before opposite party no.1 i.e. State of U.P. through Principal Secretary, Department of Home (Police Services) Government of U.P., Civil Secretariat, Lucknow to consider and decide petitioner's grievance. (Para 27)

Writ Petition No. 6566 of 2023 is disposed of. (E-4)

Case Law Cited

1. Madhya Pradesh Vs. Bani Singh and Anr., AIR 1990 SC 1308 (Para 7)
2. State of Andhra Pradesh Vs. N. Radhakrishnan, (1998) 4 SCC, 154 (Para 7)
3. P.V. Mahadevan Vs. M.D.Tamilnadu Housing Board, AIR 2006 SC 207 (Para 7)
4. Union of India and Ors. Vs J. Ahmed, (1979) 2 SCC 286 (Para 15)

List of Acts

U.P. Government Servants (Discipline and Appeal) Rules, 1999.

List of Keywords

Service, departmental proceedings, delay, charge-sheet.

Appearances for Parties

For Appellant: Rishi Raj
For Respondent: C.S.C., Raj Kumar Upadhyaya (R.K.Upadhyaya)

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

1. Heard Mr. Rishi Raj learned counsel for petitioner, learned State Counsel for opposite parties no.1 to 4 and Mr. R.K.Upadhyaya, learned counsel for opposite party no.5.

2. Petition has been filed challenging charge-sheet dated 24.05.2023 as well as consequent departmental proceedings. Further prayers are for quashing of the order dated 31.12.2022 initiating departmental proceedings for imposition of major penalty as well as the order dated 23.2.2023 and the charge-sheet dated 26.11.2024.

3. It has been submitted that with regard to an incident which took place in the year 2015, a show cause notice was issued to petitioner on 16.11.2021 which was replied to by him, whereafter by means

of order dated 31.12.2022, reference was made to the State Government for initiating departmental proceedings for imposition of major penalty.

4. In pursuance thereof, State Government vide order dated 23.02.2023 granted approval for initiation of departmental proceedings whereafter the charge-sheet dated 24.05.2023 was prepared and was issued to the Enquiry Officer for further issuance to petitioner.

5. It is submitted that however upon receipt of the said charge-sheet, the Enquiry Officer remitted the same to the Disciplinary Authority for making certain amendments in the charge-sheet and it is in pursuance thereof that charge-sheet dated 26.11.2024 terming it to be an amended charge-sheet was issued to petitioner to which he has submitted his reply.

6. The primary gist of challenge to aforesaid proceedings is that the incident pertains to the year 2015 and a charge-sheet has been issued to petitioner for the first time with regard to such an incident after almost nine years in 2024. It is submitted that due to charge-sheet being issued belatedly, prejudice has been caused to petitioner since it would be virtually impossible for him to defend himself by production of any documentary evidence due to passing of nine years.

7. Learned counsel has placed reliance upon the judgements rendered by Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Bani Singh and Anr. AIR 1990 SC 1308** as well as in the case of **State of Andhra Pradesh vs. N. Radhakrishnan reported in (1998) 4 SCC, 154** as well as **P.V.Mahadevan vs. M.D.Tamilnadu Housing Board AIR 2006 SC 207.**

8. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner on the basis of counter affidavit filed and submits that earlier in pursuance of allegations leveled against petitioner, a show cause notice had been issued to him which was withdrawn by the competent authority since it was felt that a proper departmental proceedings should be initiated against him in view of serious allegations.

9. It is submitted that it is in pursuance thereof that a charge-sheet was prepared on 24.05.2023 but upon it being sent to the Enquiry Officer, it was seen that certain relevant aspects had not been incorporated therein due to which a need was felt for correction of anomalies and thereafter the charge-sheet dated 26.11.2024 has been issued to which petitioner has already replied and the departmental proceedings shall be concluded expeditiously.

10. It is submitted that petitioner does not acquire any vested right for quashing of departmental proceedings merely on the basis of certain delay. It is submitted that even otherwise no delay has occurred since the said aspect has already been indicated in the counter affidavit as recorded herein above.

11. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the facts as indicated herein above are admitted between the parties.

12.A perusal of the charge-sheet dated 13.11.2024/26.11.2024 indicates that primary gist of allegations leveled against petitioner pertain to negligence on his part in investigation of Case Crime No.471 of

2015 registered under Section 302 IPC read with section 3(2) (V) of SC/ST Act. The narration in charge-sheet indicates the investigation which was undertaken by petitioner by calling of witness and of recording their statements.

13. The allegations primarily is that the entire investigation which was conducted by petitioner by recording of statements of witnesses was not indicated in the general diary as is required in terms of procedure of investigation. It is also indicated that the investigation was not recorded in terms of Section 55 of Code of Criminal Procedure,1973.

14. A perusal of the aforesaid charge-sheet therefore clearly indicates that the entire gist of allegations leveled against petitioner is of negligence in recording the conduct of investigation.

15. The aspect whether negligence comes within the purview of misconduct has already been considered by Hon'ble Supreme Court in the case of **Union of India and Ors. vs J. Ahmed reported in (1979) 2 SCC 286**. The relevant paragraph of the aforesaid judgment is as follows:-

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see Pierce v. Foster(1)]. A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle .(Indicator Newspapers) (2)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur(1) and Satubha K. Vaghela v. Moosa Raza(2). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik(3), in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Unio nof India(4), the mamnner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalayani v. Air France, Calcutta(5), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office

would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.(1)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

16. With regard to delay in initiation of departmental proceedings against petitioner, it is evident that allegations as indicated in the charge-sheet pertain to the year 2015. It is admitted in the counter affidavit that for the first time a show cause notice was issued to petitioner after almost six years on 16.11.2021 for awarding of censure entry under Rule-3 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999, and for withholding of integrity. There is no explanation as to why the first show cause notice was issued to petitioner only after six years of the date of incident.

17. It is also evident from perusal of paragraphs 4 and 5 of the counter affidavit that subsequently decision was taken for initiating departmental proceedings whereafter the charge-sheet dated 24.05.2023 was prepared but due to certain anomalies therein, an amended charge-sheet dated 14.11.2024 was issued on 26.11.2024. Here again, there is no narration or any explanation as to why the opposite parties took a further three years for initiating departmental proceedings in terms of Rule 7 of the Rules of 1999 despite the fact that pleadings have been made in paragraph-22 of the writ petition on the ground that departmental proceedings were initiated with delay.

18. The aspect of delay in initiating of departmental proceedings against delinquent employee and prejudice caused to such employee has clearly been adjudicated upon by Hon'ble Supreme Court in the case of Bani Singh (supra) in the following manner:-

"4.The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the

subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said Irregularities, if any-and-came-to-know-it-only-in-1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.

In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

19. The same analogy has thereafter been enunciated in the case of **N. Radha Krishnan (supra)** in the following manner:-

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he s not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer enterusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.

20. Upon applicability of aforesaid judgments in the present case, it is thus evident as enunciated by Hon'ble Supreme Court, in case delay in initiation of departmental proceedings is unexplained, prejudice to the delinquent employee is writ large on the face of record. It is evident that in case of such delay in initiation of departmental proceedings, as in the present case, where nine years have elapsed from the date of

incident to issuance of charge-sheet, it would be virtually impossible for petitioner to garner documents and evidence in his support.

21. In view of discussion made herein above, it being evident that the only allegation leveled against petitioner is of negligence, which does not amount to misconduct as also for unexplained delay in initiation of departmental proceedings, the same are clearly vitiated for being against judgements propounded by Hon'ble Supreme Court as indicated herein above.

22. Since it is on record that the charge-sheet dated 24.05.2023 already stands withdrawn with issuance of a fresh charge-sheet dated 14.11.2024/26.11.2024, there is no requirement to quash the same. Consequently the departmental proceedings initiated against petitioner in pursuance of charge-sheet dated 26.11.2024 is hereby quashed by issuance of a writ in the nature of certiorari.

23. The orders dated 31.12.2022 and 23.02.2023 granting approval for initiation of departmental proceedings against petitioner are resultantly quashed by issuance of a writ in the nature of certiorari.

24. Resultantly, the **Writ Petition No.9033 of 2024** succeeds and is allowed.

25. Parties to bear their own costs.

26. So far as Writ-A No.6566 of 2023 is concerned, it has been filed seeking only direction to the opposite parties to promote petitioner from the post of Deputy Superintendent of Police to the post of Additional Superintendent of Police (Pay Scale of Rs. 15600-39100, Grade Pay Rs.7600/- revised pay scale Matrix Pay Level-12 Rs.78800-209200) with all consequential benefits w.e.f. 7.1.2022 to 13.01.2023, from the date, when similarly situated persons/juniors to the petitioner were promoted on the post of Additional Superintendent of Police.

27. In view of Writ–A No.9033 of 2024 being allowed, liberty is granted to petitioner to make a fresh representation before opposite party no.1 i.e. State of U.P. through Principal Secretary,Department of Home (Police Services) Government of U.P., Civil Secretariat, Lucknow to consider and decide petitioner's grievance as indicated herein above.

28. Learned counsel for petitioner submits that salary for suspension period i.e. from 1 July, 2020 till 12 April 2021 has already been granted and therefore no directions with regard to same are required to be made.

29. Appropriate orders with regard to directions issued hereinabove shall be ensured within a period of eight weeks from the date a certified copy of this order is served upon the said authority.

30. With the aforesaid directions, **Writ Petition No.6566 of 2023** is accordingly disposed of.

(2025) 9 ILRA 1031
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.09.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ - A No. 10799 of 2025

Smt. Deepika Tiwari ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sanjay Misra, Pratyush Mishra

Counsel for the Respondents:
C.S.C.

Issues for consideration

Whether the petitioner falls within the ambit of being a dependant in the capacity of widowed daughter-in-law of deceased, an Assistant Teacher who died in harness, in terms of the Regulations 103 to 107 of Section 16G of the Act, 1921?

Headnotes

A. Service Law - U.P. Intermediate Education Act, 1921: Regulations 103 to 107 u/s 16G of the Chapter III - It is settled proposition of law that compassionate appointment is to be made in accordance with the rules. Once the rules themselves do not contemplate the situation as has arisen in the instant case and obviously there cannot be a situation where a person claiming himself to be a dependant on the basis of subsequent events stakes his claim for being appointed on compassionate grounds and thus clearly, such a claim would not be covered under the aforesaid regulations. (Para 26)

Explanation to Regulation 103 provides that 'member of the family' would also include a widowed daughter-in-law. At the first blush, it appears that the petitioner in the capacity of being the widowed daughter-in-law of Smt Sangeeta Bajpai is eligible for compassionate appointment. (Para 19, 20)

From the **perusal of the Regulation 104,** which provides that within 7 days of occurrence of death, the Management or the Principal or the Headmaster of the recognized aided institution shall submit a report to the Inspector which shall include the name of the deceased employee, the post held, the pay scale, the date of appointment, the date of death, the name of the appointing institution and the names of the members of his/her family along with their educational qualification, age etc. (Para 22)

Regulation 105 provides that a member of the family of the deceased employee, as specified in Regulation 104, shall submit an application to the concerned Inspector for appointment according to the qualification to the post of Assistant Teacher or to the post of non-teaching cadre which has to be considered in accordance with the provisions of Regulation 106 by the Committee. (Para 23)

Thus, **it is apparent that member of the family of the deceased employee would have to be read in accordance with the Regulations 104 & 105 which ordains the matter to be processed w.r.t. the submission of the report within 7 days of the occurrence of the death.** (Para 24)

Smt Sangeeta Bajpai died in harness on 23.04.2021. At that stretch of time, son of Smt Sangeeta Bajpai namely Shri Nikhil Bajpai was not married. The marriage is only said to have taken place on 15.02.2023 i.e. subsequent to the death of Smt Sangeeta Bajpai. Shri Nikhil Bajpai staked his claim for compassionate appointment but the same was rejected and he died even before he could challenge the same. **The petitioner staked her claim for compassionate appointment on the basis of being the widowed daughter-in-law but incidentally on the date of death of Smt Sangeeta Bajpai, the petitioner was not the daughter-in-law of Smt Sangeeta Bajpai, the marriage itself having taken place almost two years from the death of Smt Sangeeta Bajpai.** Thus, it is apparent that the petitioner **by no stretch of imagination could be considered to be the widowed daughter-in-law of Smt Sangeeta Bajpai so as to fall within the ambit of being 'member of the family' as provided u/Regulation 103 to be entitled for being appointed on compassionate grounds.** (Para 21)

B. Mere fact that the order for compassionate appointment in favour of the petitioner had been issued, which has now been withdrawn by means of the order impugned would not take away the inadmissibility of the petitioner for being appointed on compassionate grounds. (Para 27)

Writ petition dismissed. (E-4)

List of Acts
U.P. Intermediate Education Act, 1921.

List of Keywords
Service, compassionate appointment.

Appearances for Parties
For Appellant: Sanjay Misra, Pratyush Mishra
For Respondent: C.S.C.

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

1. Heard.

2. Under challenge is the order dated 21.08.2025, a copy of which is Annexure-1 to the petition, whereby the appointment order of the petitioner on compassionate grounds vide orders dated 23.05.2025 and 29.05.2025 has been cancelled.

3. From the arguments as raised by the learned counsel appearing for the petitioner and perusal of the record, it emerges that one Smt Sangeeta Bajpai who was working as Assistant Teacher died in harness on 23.04.2021. At that stretch of time, the petitioner was an unmarried lady.

4. Subsequently the petitioner claims to have got married with the son of Smt Sangeeta Bajpai namely Shri Nikhil Bajpai on 15.02.2023.

5. Son of Smt Sangeeta Bajpai had staked his claim for compassionate appointment but his claim for compassionate appointment was rejected on certain grounds. Even before the said order could be challenged by the husband of the petitioner namely Nikhil Bajpai, he died on 13.05.2023.

6. In the year 2024, the petitioner filed Writ A No.4738 of 2024 claiming compassionate appointment on account of the death of the mother-in-law Smt Sangeeta Bajpai. This Court vide judgment and order dated 19.06.2024, a copy of which is Annexure-3 to the petition, directed the respondents to consider the representation of the petitioner.

7. In pursuance thereof the claim of the petitioner was considered but rejected on certain grounds vide order dated 10.10.2024, a copy of which is Annexure-4 to the petition.

8. Being aggrieved with the said order, the petitioner filed Writ A No.10461 of 2024 and this Court vide judgment and order dated 03.03.2025, a copy of which is Annexure-2 to the petition, set aside the said order and directed the respondents to consider the claim of the petitioner afresh.

9. In pursuance thereof the respondent No.3 issued the appointment order dated 23.05.2025 and a corrected order dated 29.05.2025, copies of which are Annexure-6 to the petition whereby the petitioner was appointed on the post of Assistant Teacher (Geology) on the basis of the report of the Regional Committee. The said appointment order was issued considering the provisions of Regulations 103 to 107 under Section 16G of the Chapter III of U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'the Act, 1921').

10. The respondent No.3 also directed the respondent No.4 to allow the petitioner to join on the post of Assistant Teacher after verifying the original documents.

11. The respondent No.4 raised an objection to the appointment of the

petitioner vide the letter dated 16.06.2025 indicating that the petitioner is not the dependent of Smt Sangeeta Bajpai.

12. In pursuance thereof the D.I.O.S. has passed the impugned order dated 21.08.2025 whereby the appointment order of the petitioner dated 23.05.2025 as corrected on 29.05.2025 has been cancelled.

13. Being aggrieved the instant petition has been filed.

14. Argument of the learned counsel for the petitioner is that the D.I.O.S. has patently erred in cancelling the appointment orders as issued by him earlier on the basis of the objections raised by the respondent No.4 by indicating that the petitioner cannot be considered to be a dependent of Smt Sangeeta Bajpai rather the Regulations 103 to 107 themselves provide for appointment of the widowed daughter-in-law on compassionate grounds and thus it is prayed that the said order be set aside with a further direction to the respondents to allow the petitioner to work on the post of Assistant Teacher in pursuance of the appointment letters issued earlier.

15. Having heard learned counsel for the petitioner and having perused the record, it emerges that the petitioner staked her claim for compassionate appointment on the basis of being the widowed daughter-in-law of Smt Sangeeta Bajpai. Though the appointment letters had been issued appointing the petitioner on compassionate ground on 23.05.2025 as corrected on 29.05.2025 yet upon an objection being raised by the Institution the said orders have been cancelled.

16. Whether the petitioner falls within the ambit of being a dependant in the capacity of widowed daughter-in-law of Smt Sangeeta Bajpai, an Assistant Teacher who died in harness on 23.04.2021 in terms of the Regulations 103 to 107 of Section 16G of the Act, 1921 is to be considered.

17. For the sake of convenience, Regulations 103 to 107 are reproduced below:-

103- In case an employee, whether a teaching or non-teaching staff member, of a recognized aided institution (including a minority institution), who has been duly appointed following the prescribed procedure, dies in harness and the husband or wife (as the case may be) of the deceased employee is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government then one member of his/her family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government and who is not below 18 years of age, may be appointed either as a teacher in the Trained Graduate category or on a non-teaching post, if such person:-

(One) fulfills the educational or training qualifications prescribed for the post,

Provided further that if appointment is made to such a post for which Computer Operation and Typing has been prescribed as a mandatory qualification and the dependent of the deceased employee does not possess the requisite proficiency in Computer

Operation and Typing then he shall be appointed to the post subject to the condition that within one year he shall obtain the ?CCC? Certificate in Computer Operation awarded by DOEACC Society or any other certificate recognized by the Government equivalent thereto and also attain the required speed of 25 words per minute in Hindi typing and 30 words per minute in English typing, and if he fails to do so, his general annual increment shall be withheld and an additional period of one year shall be granted to acquire the requisite certificate in Computer Operation and the required typing speed, and if, even within the extended period, he fails to acquire the required certificate in Computer Operation and required typing speed, his services shall be terminated.

(Two) is otherwise qualified for Government service.

Explanation:- For the purposes of this Regulation, the term (c)-members of the family?-of the deceased Government servant shall include the following relatives:-

(one) wife or husband

(two) son or adopted son

(three) daughters (including adopted daughters) and widow daughters-in-law

(four) deceased Government servant's dependent unmarried brother, unmarried sister and widow mother, if the deceased Government servant was unmarried

(five) the aforementioned relatives of a missing Government servant who has been declared dead by a competent court.

"Provided that if no person from among the aforementioned relatives of the deceased Government servant is available or if such a person is found to be physically or mentally unsuitable and thus be ineligible for appointment under Government service, then, only in such a case, the term ?family? shall also include the dependent grandsons and unmarried granddaughters of the deceased Government servant."

104- Within seven days of the occurrence of death, the Management or the Principal or the Headmaster, as the case may be, of the recognized aided institution shall submit a report to the Inspector which shall include the name of the deceased employee, the post held, the pay scale, the date of appointment, the date of death, the name of the appointing institution and the names of the members of his/her family along with their educational qualification, age etc. The Inspector shall record the particulars of the deceased employee in a register maintained by him.

105- A member of the family of the deceased employee, as specified in Regulation 104, shall submit an application to the concerned Inspector for appointment according to the qualification, either to the post of Assistant Teacher or to a post in non-teaching cadre. The Committee shall consider the application and after the Committee recommends his appointment, the application shall be forwarded to the Management or the Principal or Headmaster, as the case may be, of the institution where the applicant is to be appointed in accordance with the provisions of Regulation 106, for issuance

of the appointment order. The committee shall include the following:?

1- District Inspector of Schools- Chairman

2- Finance and Accounts Officer (Secondary Education) – Member

3- Senior-most Principal, Government Inter College / Government Girls? Inter College- Member

Provided that where the dependent of the deceased employee applies for appointment after the expiry of five years from the date of death and the State Government is satisfied that an undue hardship arises in a particular case due to prescribed time limit for making an application for employment, it may exempt or relax such requirements as it deems necessary to proceed in that case in a just and equitable manner:

Provided further that for the purpose of aforementioned proviso, the concerned person shall explain the reasons and furnish adequate justification in writing for the delay in applying for appointment after expiry of the prescribed time limit, along with necessary documents/evidence in support of such delay and the Government shall take appropriate decision after considering all facts related to the reasons of delay.

106? The appointment of a family member of the deceased employee shall, so far as possible, be made in the same institution where the deceased employee was serving at the time of his death. If there be no vacancy of Assistant Teacher or in non-teaching cadre in such institution then he shall be appointed in any other recognized aided institution of the district where such vacancy is available.

Provided that if no such vacancy exists in any recognized aided institution of the concerned district at that time then the case shall be referred to the Divisional Committee by the District Committee and the dependent of the deceased employee shall be appointed against a vacancy available in the Division.

Provided further that if no post be vacant at the Division level or if the dependent of the deceased employee seeks appointment in another Division then the case shall be referred to the Directorate, where it shall be considered by a Committee constituted at the Directorate level consisting the following:?

1- Additional Director of Education (Secondary) ? Chairman

2- Joint Director of Education (Finance) ? Member

3- Deputy Director of Education (Secondary?2/Secondary?3) - Member

In the event of concurrence, following consideration by the Committee constituted at the Directorate level, the concerned District Committee shall be authorized to make appointment against the vacancy reported from the districts.

107- The recognized aided institution, to which the application has been forwarded by the Inspector for issuance of the appointment order, shall issue the appointment letter within one month from the date of receipt of application and inform the Inspector. If the appointment letter is not issued by the

inspector within the prescribed period without reasonable grounds, the Director of Education shall take appropriate action against the Inspector on receipt of representation.

(Translation by Court)

18. From a perusal of the aforesaid Regulations, it emerges that where an employee, whether a teaching or non teaching staff dies in harness then the husband or wife of the deceased employee can be appointed on compassionate grounds provided he fulfills the educational or teaching qualifications prescribed for the post.

19. Explanation to Regulation 103 provides that 'member of the family' would also include a widowed daughter-in-law.

20. At the first blush, it appears that the petitioner in the capacity of being the widowed daughter-in-law of Smt Sangeeta Bajpai is eligible for compassionate appointment.

21. However, the facts of the instant case are otherwise. Smt Sangeeta Bajpai died in harness on 23.04.2021. At that stretch of time, son of Smt Sangeeta Bajpai namely Shri Nikhil Bajpai was not married. The marriage is only said to have taken place on 15.02.2023 i.e. subsequent to the death of Smt Sangeeta Bajpai. Shri Nikhil Bajpai staked his claim for compassionate appointment but the same was rejected and he died even before he could challenge the same. The petitioner staked her claim for compassionate appointment on the basis of being the widowed daughter-in-law but incidentally on the date of death of Smt Sangeeta Bajpai, the petitioner was not the daughter-in-law of Smt Sangeeta Bajpai, the marriage itself having taken place almost two years from the death of Smt Sangeeta Bajpai. Thus, it is apparent that the petitioner by no stretch of imagination could be considered to be the widowed daughter-in-law of Smt Sangeeta Bajpai so as to fall within the ambit of being 'member of the family' as provided under Regulation 103 to be entitled for being appointed on compassionate grounds.

22. This would also amply clear from the perusal of the Regulation 104, which provides that within 7 days of occurrence of death, the Management or the Principal or the Headmaster of the recognized aided institution shall submit a report to the Inspector which shall include the name of the deceased employee, the post held, the pay scale, the date of appointment, the date of death, the name of the appointing institution and the names of the members of his/her family along with their educational qualification, age etc.

23. Regulation 105 provides that a member of the family of the deceased employee, as specified in Regulation 104, shall submit an application to the concerned Inspector for appointment according to the qualification to the post of Assistant Teacher or to the post of non teaching cadre which has to be considered in accordance with the provisions of Regulation 106 by the Committee.

24. Thus from perusal of the aforesaid Regulations, it is also apparent that member of the family of the deceased employee would have to be read in accordance with the Regulations 104 & 105 which ordains the matter to be processed with regard to the submission of the report within 7 days of the occurrence of the

death. Death of Smt Sangeeta Bajpai having occurred on 23.04.2021 and the petitioner having got married with the son of Smt Sangeeta Bajpai almost 2 years later on 15.02.2023 would thus clearly take away the petitioner from the ambit of 'member of family' as defined in Regulation 103 of the Regulations.

25. The matter could have been otherwise had the son of Smt Sangeeta Bajpai i.e. the husband of the petitioner being appointed on compassionate grounds on account of death of Smt Sangeeta Bajpai and after his death, the petitioner could have staked her claim for being appointed on compassionate grounds but the facts are otherwise.

26. It is settled proposition of law that compassionate appointment is to be made in accordance with the rules. Once the rules themselves do not contemplate the situation as has arisen in the instant case and obviously there cannot be a situation where a person claiming himself to be a dependant on the basis of subsequent events stakes his claim for being appointed on compassionate grounds and thus clearly, such a claim would not be covered under the aforesaid regulations.

27. Mere fact that the order for compassionate appointment in favour of the petitioner had been issued, which has now been withdrawn by means of the order impugned would not take away the inadmissibility of the petitioner for being appointed on compassionate grounds keeping in view the discussion made above.

28. In view of the aforesaid discussion, the writ petition fails and is ***dismissed***.

(2025) 9 ILRA 1038
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.09.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ - A No. 12336 of 2025

Pankaj Mathur ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Arpit Agarwal, Rahul Saxena

Counsel for the Respondents:
C.S.C., Shashi Kant Srivastava

Issues for consideration

Whether an employer is justified in cancelling an appointment, obtained on the basis of misrepresentation, without holding a detailed departmental inquiry?

Headnotes

A. Service Law - U.P. Intermediate Education Act, 1921: Clause 17(1)(2), Clause 19(9) - It is a settled proposition of law that any appointment secured on the basis of fraud, concealment or misrepresentation does not confer any legal right upon the incumbent. Fraud vitiates every solemn act. Honesty and integrity are the basic requirements for public employment, and suppression of material information or misrepresentation would render the appointment invalid. (Para 26, 29)

The petitioner, having obtained appointment by misrepresentation of facts and by playing fraud upon the authorities, cannot be permitted to retain the fruits of such illegality. His appointment, being tainted from the very inception, is void ab initio and non est in the eyes of law. (Para 22)

B. The principle of natural justice has no application in such a case where fraud unravels everything. "Fraud and justice never dwell together." (Para 32)

When the very foundation of an appointment is based upon falsehood and concealment, no equity can be claimed by the incumbent. The employer is fully justified in cancelling such an appointment without holding a detailed departmental inquiry. When an appointment is obtained by suppression of facts such as double passing of examinations, manipulation of date of birth, or enhancement of marks without disclosure, such employment is void ab initio. No vested right accrues to the petitioner, and the appointing authority is entitled to cancel the appointment forthwith, without conducting a detailed departmental inquiry. (Para 23, 24)

The petitioner was appointed as an Assistant Teacher pursuant to the selection process conducted by the Basic Shiksha Parishad. It subsequently came to light that the petitioner had passed the High School as well as the Intermediate Examinations on two occasions. While applying for public employment, the petitioner deliberately suppressed the fact of having appeared twice in the said examinations. Not only this, the petitioner secured benefit of the altered DOB and enhanced marks obtained in the subsequent examination, without disclosing the same to the appointing authority. Upon discovery of the concealment, the respondents cancelled the appointment of the petitioner treating it to be *void ab initio*. (Para 25)

C. Once an appointment is shown to be procured by concealment of fact, the action of the authority is not a termination of service (which presupposes valid service) but a declaration that no valid appointment ever existed. The petitioner's plea that a regular departmental inquiry should have preceded cancellation is unsustainable. The procedural protections under service rules for valid incumbents cannot be invoked to validate an appointment fundamentally corrupted by fraud. (Para 35)

D. It is a settled proposition of law that protection u/Article 311 of the Constitution of India is available only to a person who has been validly and legally appointed to a civil post under the Union or a State. The constitutional safeguard presupposes a lawful entry into service. When an incumbent secures appointment by suppression of material facts, misrepresentation or by producing forged or fabricated certificates, such an appointment is *void ab initio* and confers no right to hold the post. (Para 36, 37)

In the present case, the petitioner, by abusing the process of law by concealing material fact, has sought to usurp public employment which is meant to be offered only to deserving candidates. This Court cannot extend its discretionary jurisdiction to protect such a tainted appointment. (Para 38)

E. In absence of a specific statutory provision to the contrary, the first certificate shall prevail for all legal, service and official purposes, and the second attempt may only supplement but cannot supplant the original. (Para 39, 41)

Where a candidate has passed the High School Examination twice, the certificate which is to be taken into consideration shall ordinarily be the first validly obtained certificate, as the same constitutes the original and authentic record of educational qualification as well as the DOB. The subsequent certificate, obtained upon re-appearing in the examination, may at best be treated as an improvement certificate for academic purposes, provided the concerned Board of Examination has duly recognized and endorsed it. However, for the purposes of public employment, service matters, or determination of age, the authorities are not bound to act upon the later certificate, especially if the same has been procured to alter the marks or manipulate the date of birth. (Para 40)

F. The appointment letter itself contains a categorical stipulation that in the event, during scrutiny of the educational certificates, any fraud is detected or any concealment is established on the part of the petitioner, his appointment shall stand automatically cancelled without requiring any further act on the part of the authorities. Thus, the very foundation of the

petitioner's appointment was conditional and subject to verification, and once the concealment and misrepresentation came to light, the cancellation of his appointment was the inevitable consequence flowing from the terms of his engagement. (Para 43)

Writ petition dismissed. (E-4)

Case Law Cited

1. Kuldeep Kumar Pathak Vs. State of U.P. & Others reported in (2016) 2 SCC 521 (Para 9)

2. Laxmi Shanker Yadav Vs. State of U.P. And 4 Others, Writ-A No.5394 of 2021, as decided by the Co-ordinate Bench of this Court on 14.9.2021 (Para 9)

3. Dharmraj Vs. The Educational Officer Puddukkottai & Others, (2022) 11 SCC 629 (Para 9)

4. Rao Mohammad Arif Vs. State of U.P. and 4 Others, Judgment passed by Co-ordinate Bench of this Court in Special Appeal No.124 of 2023 (Para 9)

5. Laxmi Shakya Vs. State Of U.P. And 3 Others, Writ- A No. 1111 of 2023, as decided on 10.4.2023 (Para 10)

6. S.P. Chengalvaraya Naidu Vs. Jagannath, (1994) 1 SCC 1 (Para 21)

7. A.P. Public Service Commission Vs. B. Sarat Chandra, (1990) 2 SCC 669 (Para 21)

8. Kamlesh Kumar Nirankari Vs. State of U.P. And 2 Others, Writ-A No.20140 of 2023, as decided on 25.08.2025 (Para 21)

9. Union of India Vs. M. Bhaskaran, 1995 Supp (4) SCC 100 (Para 26)

10. Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav, (2003) 3 SCC 437 (Para 26)

11. Avtar Singh Vs. Union of India, (2016) 8 SCC 471 (Para 26)

12. Union of India & Ors. Vs. Prohlad Guha Etc., 2024 SCC Online SC 1865 (Para 28)

13. Vishnu Vardhan Vs. State of Uttar Pradesh And Others, 2025 SCC Online SC 1501 (Para 28)

14. District Collector & Chairman, Vizianagaram Social Welfare Residential School Society Vizianagaram And Another Vs. M. Tripura Sundari Devi, (1990) 3 SCC 655 (Para 30)

15. Union of India Vs. M. Bhaskaran, (1995) Supp (4) SCC 100 (Para 30)

16. Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav, (2003) 3 SCC 437 (Para 30)

17. R. Vishwanatha Pillai Vs. State of Kerala And Others, (2004) 2 SCC 105 (Para 30)

18. Virendra Kumar Mishra vs. State of U.P. And 4 Others, Writ-A No.11846 of 2025, as decided on 19.8.2025 (Para 32)

List of Acts

U.P. Intermediate Education Act, 1921.

List of Keywords

Service, appointment, cancelled, misrepresentation, fraud, concealment.

Appearances for Parties

For Appellant: Arpit Agarwal, Rahul Saxena
For Respondent: C.S.C., Shashi Kant Srivastava

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard learned counsel for the petitioner, Mr. Shashi Kant Srivastava, learned counsel for respondent-B.S.A. as well as learned Standing Counsel for the State.

2.The present petition has been filed with the prayer to quash the impugned order dated 4.4.2025 passed by the District Basic Education Officer, Pilibhit vide which the appointment of the petitioner as Assistant Teacher stands cancelled.

3.Placing the facts of the case, learned counsel for the petitioner submits

that the petitioner was appointed as Assistant Teacher, in accordance with law, pursuant to the selections as made in the Assistant Teacher Recruitment Examination, 2020. Accordingly, appointment letter dated 5.12.2020 was issued to the petitioner and he joined at Primary School Pagawan, Development Area Bilsanda, District- Pilibhit on 29.1.2021 on the post of Assistant Teacher. Since then, the petitioner has been discharging his duties with utmost honesty and integrity, there being no complaint whatsoever against him.

4.The petitioner had qualified for the post of Assistant Teacher and relevant educational documents were supplied by the petitioner to the respondent authorities, after verification of which, appointment was given to the petitioner. The petitioner has placed the said documents as Annexure No.3 to the present petition which were placed before the respondent authorities for verification of the same. The said documents include :-

(a) High School mark-sheet, issued by the Board of High School and Intermediate Education, Uttar Pradesh having Serial No.33022904, wherein High School is shown to be passed in the year 2010 with Roll No.1141730 and the date of birth is shown as 15.5.1995.

(b) High School passing certificate bearing Serial No.1249699.

(c) Intermediate certificate-cum-mark-sheet, issued by the Board of High School and Intermediate Education, Uttar Pradesh having Certificate No.209023, wherein Intermediate is shown to be passed in the year 2012 with Roll No.2164760.

(d) Bachelor of Arts from Chhatrapati Sahu Ji Maharaj University, Kanpur, a three years course certificate examination, passed in the year 2016 with second division having Enrollment No.CSJMA13000125472.

(e) Bachelor of Arts Degree issued by Chhatrapati Sahu Ji Maharaj University, Kanpur with Roll No.6121617.

(f) B.T.C. Two Years Course Examination 2017 (Batch 2015) First Semester, issued by Examination Regulatory Authority, Uttar Pradesh, Allahabad with Roll No.151080267.

(g) B.T.C. Two Years Course Examination 2017 (Batch 2015) Second Semester, issued by Examination Regulatory Authority, Uttar Pradesh, Allahabad with Roll No.161080312.

(h) B.T.C. Two Years Course Examination 2018 (Batch 2015) Third Semester, issued by Examination Regulatory Authority, Uttar Pradesh, Allahabad with Roll No.172080034.

(i) B.T.C. Two Years Course Examination 2018 (Batch 2015) Fourth Semester, issued by Examination Regulatory Authority, Uttar Pradesh, Allahabad with Roll No.181080333.

(j) Basic Teacher Certificate Two Year Course Batch 2015 (Examination Year 2018) issued by Examination Regulatory Authority, Uttar Pradesh with Roll No.181080333.

(k) Uttar Pradesh Teacher Eligibility Test-2018 certificate (Primary Level) as issued by Examination

Regulatory Authority, U.P. 23 Allenganj, Prayagraj with Roll No.1110905733.

(l) The result of Assistant Teacher Recruitment Examination-2019, shown as qualified with Roll no.08113618600.

(m) Domicile Certificate issued by Government of Uttar Pradesh having Certificate No.212192001280.

(n) Caste Certificate issued by Government of Uttar Pradesh having Certificate No.212194000305.

(o) Character Certificate.

(p) Fitness Certificate.

5.It appears that some complaint was made by one Vinay Kumar on 10.1.2024 with the allegation that the petitioner had appeared twice in High School and Intermediate examination, therefore, an inquiry was conducted relying upon which, the impugned order has been passed without giving any notice or opportunity of hearing to the petitioner, therefore, the order impugned is arbitrary, illegal and unsustainable in the eyes of law.

6.Learned counsel for the petitioner submits that the order impugned has been passed without providing any opportunity of hearing to the petitioner, therefore, it is illegal and against the principles of natural justice. Relying upon a complaint, without following the proper procedure as prescribed under law, the order impugned cancelling the appointment of the petitioner has been passed which is against the settled principles of law as held by the Apex Court and Hon'ble Court in catena of judgments.

7.Learned counsel for the petitioner further submits that at no point of time, the certificate of High School and Intermediate have been annulled by the Board or any competent authority thus, relying upon the allegations as made in the complaint that the petitioner has passed High School and Intermediate twice, passing the impugned order is not sustainable in the eyes of law.

8.Learned counsel for the petitioner in support of his submission has relied upon a judgement passed by Division Bench of this Court in Special Appeal Defective No. - 9 of 2024 (Basic Shiksha Adhikari vs. Laxmi Shakya And 3 Others) as decided on 24.05.2024, wherein the Court was of the view that where the petitioner has undergone through any examination twice and none of them have been declared a nullity by the competent Examination Board, rather the certificates which were used by the petitioner therein were found to be genuine on verification by the concerned Examination Body, unless the same is declared null & void by the competent Examination Authority, the services of the petitioner cannot be terminated on the aforesaid ground.

9.The aforesaid order in the special appeal was passed relying upon the case of **Kuldeep Kumar Pathak vs. State of U.P. & Others** reported in **(2016) 2 SCC 521, Laxmi Shanker Yadav vs. State of U.P. And 4 Others (Writ-A No.5394 of 2021**) as decided by the Co-ordinate Bench of this Court on 14.9.2021, **A. Dharmraj vs. The Educational Officer Puddukkottai & Others reported in (2022) 11 SCC 629** as well as judgment passed by Co-ordinate Bench of this Court in **Special Appeal No.124 of 2023 (Rao Mohammad Arif vs. State of U.P. and 4 Others).** Relying upon Clause 17(1) (2) as well as Clause 19 (9) of

U.P. Intermediate Education Act, which came into force with effect from 28.7.2021, learned counsel for the petitioner submits that the aforesaid provides for prohibition from appearing in the high school and intermediate examination from different schools, twice in the same year, cannot be applied retrospectively.

10.Learned counsel for the petitioner contends that the impugned order of cancellation is arbitrary and is in violation of principles of natural justice. It is urged that once the appointment was made, it could not have been cancelled without holding a regular departmental inquiry. In support of his submission, he has relied upon a judgment passed by Co-ordinate Bench of this Court in Writ- A No. - 1111 of 2023 (Laxmi Shakya vs. State Of U.P. And 3 Others) as decided on 10.4.2023, in which it has been specifically held that there is no bar to obtain overlapping or parallel certificates of high school and intermediate and there is no regulatory framework prohibiting two simultaneous degrees. The aforesaid clauses in the relevant Act also do not prohibit two certificates for the same course.

11. Learned counsel for respondent-B.S.A., however, submits that the petitioner has sought appointment as Assistant Teacher using the high school mark-sheet of the year 2010 having Roll No.1141730 and intermediate mark-sheet of the year 2012 having Roll No.2164760, which shows changed date of birth and increased marks. Thus, the petitioner has concealed the fact about passing out the high school and intermediate examination twice and has mislead the authorities while concealing the aforesaid fact and seeking appointment as Assistant Teacher, therefore, there is no illegality or infirmity in the order impugned.

12. Per contra, learned Standing Counsel submits that the petitioner had played fraud upon the authorities by concealing material facts and securing appointment on false premises. It is argued that an appointment obtained by concealment of fact or misrepresentation is a nullity in the eyes of law, and no vested right flows from such an illegal entry into service.

13. Heard learned counsels for the parties and perused the record.

14. From the records, it is evident that on a complaint as made against the petitioner, regarding petitioner's passing high school and intermediate examination twice, showing lesser age and obtaining appointment, an inquiry was conducted on 19.1.2024 by Block Education Officer, Bilsanda, directing him to scrutinize the educational certificates as placed by the petitioner and place a report accordingly but he did not provide the same.

15.Several dates were fixed calling the petitioner, the concerned Block Education Officer and the complainant, to find out the reality as made in the complaint. On 22nd May 2024, the petitioner provided the relevant educational documents i.e. the online mark-sheets of high school examination of the years 2009 & 2010, the mark-sheet of intermediate examination of the years 2011 & 2012, B.T.C. Training 2015, Registration Certificate of B.T.C. Training 2015 and an affidavit in the office of respondent no.3, namely, District Basic Education Officer, Pilibhit.

16.The complainant Vinay Kumar had also filed an affidavit, mentioning

therein that the petitioner had passed high school and intermediate twice i.e. high school in the year 2009 as well as 2010 and intermediate in the year 2011 as well as 2012. In the high school mark sheet of the year 2009, the date of birth of the petitioner was shown as 15.5.1994 and that in the year 2010, it was shown as 15.5.1995. Thus, in order to ascertain the truth, on 25.5.2024, notice was given to the petitioner to place his explanation in this regard. The petitioner, accordingly, submitted a representation on 10.6.2024, mentioning therein that a false complaint has been made by Vinay Kumar who has also not appeared before the authorities concerned during the hearings, despite several notices and opportunities being given to him. The photograph and Aadhaar card of the complainant has also not been annexed in the affidavit as given by the him and a false complaint has been made for the purposes of mental harassment of the petitioner.

17. By letter dated 18.6.2024, the District Basic Education Officer, Pilibhit fixed the dated for hearing on 25.6.2024 at 11:00AM, wherein the complainant was also required to be present. The aforesaid notice was sent at the complainant's address as mentioned in the affidavit but the address as mentioned could not be found and the phone number was also incorrect, therefore, the notice returned from the post office. By letter dated 5.7.2024, again the dated fixed for hearing was 12.7.2024 at 11:00AM. The aforesaid notice also could not be served to the complainant. In order to know the correctness of the allegations as mentioned in the complaint, a two member committee, comprising of the Block Education Officer, Bisalpur and Block Education Officer, Barkhera was constituted. The aforesaid committee did not submit any report, therefore, on 8.11.2024 again a direction was issued to the aforesaid committee to submit a report. In the inquiry report as submitted on 9.11.2024, it was found that the petitioner changing his date of birth has passed high school and intermediate twice. The high school mark-sheet of the year 2010 and the intermediate mark-sheet of the year 2012 has been placed before the authorities to obtain appointment as Assistant Teacher without disclosing the fact about high school and intermediate being passed in the year 2009 and 2011 also. Thus, prima facie finding that the allegations as made by the complainant were correct, notice dated 20.11.2024 was sent to the petitioner, requiring him to submit his reply/explanation. The petitioner did not appear before respondent no.3 on 27.11.2024 at 3 O'clock as directed, therefore, another opportunity by means of notice dated 12.12.2024, was provided to him to appear on 16.12.2024 at 11:00AM. On 12.12.2024, complainant, namely, Mr. Bhaiyalal S/o Mr. Kanhaiya Lal was present who submitted his photograph pasted affidavit along with Aadhaar card, mentioning about the same allegations as made in the earlier complaint.

18.The petitioner appeared before the respondent no.3 on 16.12.2024 and placed his written explanation accepting that he has passed high school and intermediate twice. He has further admitted in his explanation that as he was not aware about the fact that he has to disclose this fact of passing high school and intermediate twice before the appointing authority, therefore, due to ignorance, he could not mention about the aforesaid fact and has tendered apology for the same. He has submitted in his explanation that he has sought appointment on the post of Assistant

Teacher by placing one mark-sheet only. The authorities concerned after perusing the complaint as made by Vinay Kumar S/o Ishwar Prasad and Bhaiyalal S/o Kanhaiya Lal as well as the report submitted by the Two Member Committee and explanation as submitted by the petitioner-Pankaj Mathur, found that the petitioner has passed high school and intermediate twice, thus, found that the allegations as made in the complaint were correct.

19. The District Level Committee found it necessary to get an inquiry of the mark-sheets of the petitioner conducted by the Secretary, U.P. Madhyamik Shiksha Board, Prayagraj, therefore, on 7.1.2025, the Secretary was directed to inquire about the petitioner's high school mark-sheets of the years 2009 & 2010 and intermediate mark-sheets of the years 2011 & 2012 and ascertain as to which mark-sheet is genuine. Accordingly, the Secretary, U.P. Madhyamik Shiksha Board, Prayagraj vide letter dated 10.3.2025 as modified on 17.3.2025, has provided the following information :-

"कि इण्टरमीडिएट शिक्षा अधिनियम, 1921 के अधीन बनायेगयेविनियमों के अध्याय - बारह विनियम-17 (1) एवं 17 (2) के अनुसार कोई भी परीक्षार्थी जिसनेहाईस्कूल या इण्टरमीडिएट परीक्षा अथवा उसके समकक्ष परीक्षा उत्तीर्णकर ली ह, ै बाद की हाईस्कूल या इण्टरमीडिएट परीक्षा मेंकन्प्यूटर विषय को छोड़कर हाईस्कूल मेंपाँच तथा इण्टरमीडिएट परीक्षा मेंचार विषयों मेंही प्रविष्ट हो सकता हा।ै उक्त विनियमों केअनुसार परीक्षार्थी श्री पंकज माथुर द्वारा दुबारा जन्म तिथि बदल कर दुबारा सम्पूर्णके साथ अलग-अलग जनपदों से उत्तीर्णकी गयी हाईस्कूल परीक्षा वर्ष- 2010 अनु0 1141730 एवं इण्टरमीडिएट परीक्षा वर्ष- 2012 अनु0 2164760 का परीक्षाफल बैध नही हैं"

20.The Secretary, U.P. Madhyamik Shiksha Board, Prayagraj further concluded that from the aforesaid it is clear that the petitioner has passed high school and intermediate examination twice in different years, from different institutions, changing the date of birth as mentioned earlier. Thus, the petitioner has obtained appointment by showing the changed date of birth and for the sake of taking undue advantage, deliberately not disclosed about passing high school and intermediate examination twice, thus, misleading the authorities while seeking appointment as Assistant Teacher pursuant to the advertisement for selection of 69000 Assistant Teachers. Thus, relying upon the aforesaid inquiry, after giving opportunity of hearing to the petitioner, the order impugned has been passed.

21.The present case reveals that the petitioner, while seeking public employment, deliberately suppressed the material fact of having passed the High School and Intermediate examinations twice. He further manipulated his candidature by utilizing the altered date of birth and enhanced marks obtained in the subsequent examination, without disclosing the same to the appointing authority and has succeeded in securing appointment to the post of Assistant Teacher. Such conduct is not only fraudulent but also amounts to a calculated deception played upon the appointing authority. It is trite law that fraud vitiates every solemn act and no person can be permitted to reap the fruits of an employment obtained by suppression, misrepresentation or falsification of documents. The Hon'ble Supreme Court **in S.P. Chengalvaraya Naidu v. Jagannath,** reported in **(1994) 1 SCC 1**, has categorically held that a person who approaches the Court with unclean hands and suppresses material facts is not entitled to any relief. Similarly, in **A.P. Public Service Commission v. B. Sarat Chandra,** reported in **(1990) 2 SCC 669**, it was observed that when an appointment is

obtained by concealment of fact or misrepresentation, the same is void ab initio and liable to be cancelled forthwith. This Court in the case of **Writ-A No.20140 of 2023 (Kamlesh Kumar Nirankari vs. State of U.P. And 2 Others)** as decided on 25.08.2025 has held that in case the employment has been obtained based on fraudulent documents on concealing material facts, the beneficiary of such fraud cannot seek any inquiry in terms of Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999.

22.It is a settled proposition of law that any appointment secured on the basis of fraud, concealment or misrepresentation does not confer any legal right upon the incumbent. Fraud vitiates every solemn act. The petitioner, having obtained appointment by misrepresentation of facts and by playing fraud upon the authorities, cannot be permitted to retain the fruits of such illegality. His appointment, being tainted from the very inception, is void ab initio and non est in the eyes of law.

23.Even otherwise, when the very foundation of an appointment is based upon falsehood and concealment, no equity can be claimed by the incumbent. The principle of natural justice has no application in such a case where fraud unravels everything. The employer is fully justified in cancelling such an appointment without holding a detailed departmental inquiry.

24.When an appointment is obtained by suppression of facts such as double passing of examinations, manipulation of date of birth, or enhancement of marks without disclosure, such employment is void ab initio. No vested right accrues to the petitioner, and the appointing authority is entitled to cancel the appointment forthwith, without conducting a detailed departmental inquiry.

25.The petitioner was appointed as an Assistant Teacher pursuant to the selection process conducted by the Basic Shiksha Parishad. It subsequently came to light that the petitioner had passed the High School as well as the Intermediate Examinations on two occasions. While applying for public employment, the petitioner deliberately suppressed the fact of having appeared twice in the said examinations. Not only this, the petitioner secured benefit of the altered date of birth and enhanced marks obtained in the subsequent examination, without disclosing the same to the appointing authority. Upon discovery of the concealment, the respondents cancelled the appointment of the petitioner treating it to be void ab initio.

26.It is a settled proposition of law that fraud vitiates every solemn act. Suppression of material facts, particularly in the matter of public employment, amounts to fraud upon the employer. The Hon'ble Supreme Court **in Union of India v. M. Bhaskaran reported in 1995 Supp (4) SCC 100**, categorically held that an appointment obtained on the basis of forged or fabricated documents is void ab initio and no departmental inquiry is required before cancelling such appointment. Similarly, in **Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav reported in (2003) 3 SCC 437, t**he Apex Court ruled that suppression of material facts or furnishing false information disentitles a candidate from continuing in service. Again, in **Avtar Singh v. Union of India reported in (2016) 8 SCC 471**, it has been reiterated that honesty and integrity are the basic requirements for public employment, and

suppression of material information or misrepresentation would render the appointment invalid.

27.Applying the aforesaid principles to the facts of the present case, it is manifest that the petitioner deliberately concealed that he had passed the High School and Intermediate twice and had availed benefit of altered date of birth and enhanced marks. Such conduct is nothing short of fraud. Once the very foundation of the appointment is based on falsehood, the appointment is non est in the eyes of law. The plea of violation of natural justice also does not merit acceptance. When an appointment is secured by playing fraud, no equity can be claimed by the wrongdoer. Fraud unravels everything.

28.In view of the foregoing discussion, this Court has no hesitation in holding that the appointment of the petitioner was void ab initio. The action of the respondents in cancelling the same does not suffer from any legal infirmity. In the case of **Union of India & Ors. v. Prohlad Guha Etc.** reported in **2024 SCC Online SC 1865**, the Apex Court held that appointments secured on compassionate grounds through fraudulent documents are liable to be set aside. Similarly, in the case of **Vishnu Vardhan v. State of Uttar Pradesh And Others** reported in **2025 SCC Online SC 1501**, the Apex Court reaffirmed that any judgment, order or appointment obtained by suppression of material facts or fraud cannot be sustained and is void ab initio. These decisions reaffirm the settled legal maxim that fraud vitiates everything.

29.The law is now well established that fraud vitiates every solemn act. An appointment procured by misrepresentation, forgery, or suppression of material facts is a nullity, conferring no lawful right on the appointee. Procedural safeguards reserved for validly appointed employees do not extend to protect appointments fundamentally tainted by fraud/concealment.

30.In the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society Vizianagaram And Another vs. M. Tripura Sundari Devi reported in (1990) 3 SCC 655**, the Hon?ble Supreme Court has held that an appointment founded on false information is void. Similarly in the case of Union of India v. M. Bhaskaran reported in (1995) Supp (4) SCC 100, the Apex Court has held that no regular disciplinary inquiry is necessary where entry into service itself is obtained by false documents. The Apex Court in the cases of **Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav reported in (2003) 3 SCC 437** as well as **R. Vishwanatha Pillai v. State of Kerala And Others reported in (2004) 2 SCC 105,** also affirm the doctrine that affiliation by fraud/concealment renders the appointment as void ab initio.

31.It is settled position of law that the annulled selections and appointments that were procured through large-scale manipulation, holding that no vestigial right can be derived from fraudulent appointment. The Court emphasized that the employer is empowered indeed obliged to cancel such appointments forthwith.

32.In another judgment passed in **Writ-A No.11846 of 2025 (Virendra Kumar Mishra vs. State of U.P. And 4 Others)** as decided on 19.8.2025, this Court has held that fraudulently obtained order of appointment or approval can be

recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together."

33.Similarly, in the case of **Vishnu Vardhan (supra),** the Hon?ble Supreme Court reiterated that fraud invalidates judicial and administrative actions alike, and that no procedural regularity can salvage an act obtained by fraud.

34.In the present case, the verification report clearly establishes that the petitioner had not disclosed about passing high school and intermediate twice and also could not explain his conduct for the same

35.The petitioner's plea that a regular departmental inquiry should have preceded cancellation is unsustainable. Once an appointment is shown to be procured by concealment of fact, the action of the authority is not a termination of service (which presupposes valid service) but a declaration that no valid appointment ever existed. The procedural protections under service rules for valid incumbents cannot be invoked to validate an appointment fundamentally corrupted by fraud.

36.It is a settled proposition of law that protection under Article 311 of the Constitution of India is available only to a person who has been validly and legally appointed to a civil post under the Union or a State. The constitutional safeguard presupposes a lawful entry into service. When an incumbent secures appointment by suppression of material facts, misrepresentation or by producing forged or fabricated certificates, such an appointment is void ab initio and confers no right to hold the post.

37.The Hon'ble Supreme Court **in R. Vishwanatha Pillai (supra)** as well as **M. Bhaskaran (supra)**, and other pronouncements has consistently held that fraud vitiates everything and that an appointment obtained by fraudulent means is non est in the eyes of law. In such circumstances, the individual never acquires the status of a government servant, and therefore cannot invoke the protection of Article 311 of Constitution of India. Termination of service in these cases is not a penalty attracting the requirement of a regular departmental inquiry but merely a declaration of the illegality of the very appointment itself. The plea that Article 311 mandates an inquiry before cancellation of such an appointment is wholly misconceived. Accordingly, it is held that where an appointment is obtained on the basis of fake or forged certificates, the employer is competent to cancel the same without holding any inquiry under Article 311 of the Constitution, as such an incumbent cannot claim any constitutional protection of tenure.

38. In the present case, the petitioner, by abusing the process of law by concealing material fact, has sought to usurp public employment which is meant to be offered only to deserving candidates. This Court cannot extend its discretionary

jurisdiction to protect such a tainted appointment. The action of the authorities in cancelling the appointment of the petitioner, being in conformity with the settled principles of law, calls for no interference.

39. This Court is of the considered view that where a candidate has passed the High School Examination twice, the certificate which is to be taken into consideration shall ordinarily be the first validly obtained certificate, as the same constitutes the original and authentic record of educational qualification as well as the date of birth.

40.The subsequent certificate, obtained upon re-appearing in the examination, may at best be treated as an improvement certificate for academic purposes, provided the concerned Board of Examination has duly recognized and endorsed it. However, for the purposes of public employment, service matters, or determination of age, the authorities are not bound to act upon the later certificate, especially if the same has been procured to alter the marks or manipulate the date of birth.

41.It is thus held that in absence of a specific statutory provision to the contrary, the first certificate shall prevail for all legal, service and official purposes, and the second attempt may only supplement but cannot supplant the original.

42.The judgment as cited by learned counsel for the petitioner is not applicable in the present facts of the case as it speaks about no bar in obtaining two parallel certificates of high school and intermediate whereas in the present case, the petitioner has passed high school and intermediate twice and has taken benefit of date of birth and enhanced marks placing the second mark-sheet of the high school and intermediate.

43.Even otherwise, this Court finds that the appointment letter itself contains a categorical stipulation that in the event, during scrutiny of the educational certificates, any fraud is detected or any concealment is established on the part of the petitioner, his appointment shall stand automatically cancelled without requiring any further act on the part of the authorities. Thus, the very foundation of the petitioner?s appointment was conditional and subject to verification, and once the concealment and misrepresentation came to light, the cancellation of his appointment was the inevitable consequence flowing from the terms of his engagement.

44.In view of the above, the present petition lacks merit and is **dismissed,** accordingly.

(2025) 9 ILRA 1049
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.09.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ- B No. 840 of 2025

Mohd. Jahid ...Petitioner
Versus
Dy. Director of Consolidation, Sitapur & Anr. ...Respondents

Counsel for the Petitioner:
Ankit Pande, Virendra Bhatt

Counsel for the Respondents:

C.S.C., Ashish Chaturvedi, Dilip Kumar Pandey

Issue for consideration

Whether the Deputy Director of Consolidation has rightly and in accordance with law set-aside the judgment and order of the Trial Court and remanded the matter for decision afresh in accordance with the directions and observations or the revisional Court could have framed the issues and referred the matter to the Trial Court for taking evidence on them and after trying recorded it's findings and decided the appeal?

Headnotes

A. Property Law - Uttar Pradesh Consolidation of Holdings Act, 1953: Section 48(1); of U.P. Z.A. & L.R. Act: Section 171; Code of Civil Procedure, 1908: Order XLI Rule-23, 23-A, 25 - Where the Trial Court has disposed of the Suit on merits and the decree is reversed in appeal and the Appellate Court considered that retrial is necessary, the Appellate Court may remand the suit to the Trial Court. (Para 24)

The power of the Appellate Court to remand the case to a subordinate court is contained in order XLI Rule 23, 23-A and 25 of C.P.C. It is, therefore, obligatory upon the appellant to bring the case under any of these provisions before claiming a remand and the Appellate Court is required to record reasons as to why it has taken recourse to any one out of three Rules of Order XLI of C.P.C. for remanding the case to the Trial Court. (Para 22)

B. Whether or not the Appellate Court should remit the matter is discretionary with the Appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. (Para 26)

It is quite safe to adopt that appeal u/order 43 Rule (1) clause (u) should be heard only on the ground enumerated in Section 100. (Para 27)

It would be the duty of the Deputy Director to scrutinise the whole case so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. (Para 29)

Accordingly, in the light of the contradictory facts which have emerged going to the root of the matter, a proper adjudication was not possible and it is only after verifying the correct facts and recording further evidence the matter could have been adjudicated and for the said reason he has remanded the matter back to the Consolidation Officer for decision afresh. (Para 30)

Undoubtedly the Deputy Director of Consolidation is clothed with sufficient power to decide the matter himself but such an exercise of power would be valid when the entire evidence is available on record and merely after oral hearing of the parties, the matter could be adjudicated and decided finally but when the Deputy Director of Consolidation is of the view that further evidence is required to be adduced which may require examination of the witnesses and also the cross examination by the other parties there in such a situation he may exercise such a discretion either to proceed with the matter himself or to remand the matter to the trial court. (Para 31)

Accordingly, in the present case, the Deputy Director of Consolidation has duly considered the entire facts and also clearly recorded the inadequacies and inaccuracies in the essential facts which are available on record which necessitate further re-inquiry and evidence, for which purpose the matter has been remitted to the trial court and such exercise of discretion cannot be faulted. (Para 32)

Writ petition dismissed. (E-4)

Case Law Cited

1. Afsar Ali Khan and others Vs. Liyakat Khan and others, 2025 (166) RD 233 (Para 12)

2. Angad Pratap Singh and others Vs. Deputy Director Consolidation and others, 2023(41) LCD 604 (Para 12)

3. Syeda Rahimunnisa Vs. Malan Bi (dead) by L.R.s and Another, (2016) 10 SCC 315 (Para 22)

4. Sree Panimoola Devi Temple and others Vs. Bhuvanchandran Pillai and others, (2015) 12 SCC 698 (Para 23)

5. Jagannathan Vs. Raju Sigamani and Another, (2012) 5 SCC 540 (Para 24)

6. P. Purushottam Reddy and Another Vs. Pratap Steels Ltd., (2002) 2 SCC 686 (Para 25)

7. Maya Devi (Dead) through LRs Vs. Raj Kumari Batra (Dead), (2010) 9 SCC 486 (Para 26)

8. Narayanan Vs. Kumaran and others, (2004) 4 SCC 26 (Para 27)

9. Gulab Chand Vs. D.D.C., 2019 SCC OnLine All 4756 (Para 28)

10. Sheo Nand Vs. D.D.C., Allahabad, (2000) 3 SCC 103 (Para 29)

List of Acts

Uttar Pradesh Consolidation of Holdings Act, 1953; U.P. Z.A. & L.R. Act; Code of Civil Procedure, 1908.

List of Keywords

consolidation, appeal, discretionary, remand.

Appearances for Parties

For Petitioner: Ankit Pande, Virendra Bhatt
For Respondent: C.S.C., Ashish Chaturvedi, Dilip Kumar Pandey

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

1. Heard Shri R.S. Pandey, learned Senior Advocate assisted by Shri Ankit Pandey for the petitioner, learned Standing Counsel for respondent no.1, Shri Dileep Kumar Pandey, learned counsel for respondent no.2 and Shri Desh Deepak Singh and Ms. Aniveksha Shukla holding brief of Shri Ashish Chaturvedi for the private respondents.

2. By means of present writ petition, the petitioner has assailed the validity of the order dated 27.6.2025 passed by the Deputy Director of Consolidation, District Raebareli in exercise of power under Section 48 (1) of Uttar Pradesh Consolidation of Holdings Act, 1953 remanding the matter back to the trial court for decision afresh.

3. It has been submitted by learned counsel for the petitioner that controversy in the present case pertains to land situated at Khata No. 282 comprising plot no. 511/1.264 hectare, 2740/0.440 hectare and 298/0.277 hectare, situated at village Ataganj, Usari, Pargana and Tehsil Salon, District Raebareli.

4. It has been submitted by learned counsel for the petitioner that the aforesaid land was recorded in the name of Sadique son of Mohd. Khalique and Shakeel son of Nasir. He has submitted that in the basic year Khatauni the disputed land was initially recorded in the name of Khalique who was survived two sons, namely, Sadique and Nasir. Nasir died in 1979 and was survived of his wife Zohra Bibi and his son Shakeel.

5. According to the petitioner, Zohra Bibi after the death of her husband Mohd. Nasir, remarried with one Aziz Ahmad son of Wajid Ali and after taking divorce remarried on 21.10.1994 with Mobin Ahmad son of Munir Ahmad. It has further been submitted that Shakeel son of Nasir died on 10.11.1991.

6. It is in the aforesaid circumstances, it has been submitted that

Sadique son of Mohd. Khalique moved an application for mutation of his name in the revenue record on 11.12.1991 and in the meanwhile Smt. Zohra Bibi got her name mutated through P.A. 11 in the revenue record in place of Shakeel Ahmad who has died as a minor. Siddique who is the father of the petitioner had also moved an application on 11.12.1991 for setting aside the order passed in P.A. 11. The Tehsildar by means of order dated 27.11.1992, set aside the order passed by the Supervisor Kanungo in favour of Smt. Zohra Bibi and allowed the application of Saddique as being the heir and successor of Shakeel Ahmad son of Nasir.

7. It has further been submitted that though the order dated 27.11.1992 was challenged by Smt. Zohra Bibi but her name has been recorded for second time through P.A. 11 being the widow of Nasir in place of Shakeel on 3.12.1992 and on the basis of the said entry executed a sale deed in favour of opposite parties no. 3 to 6 on 29.1.1999.

8. It has further been stated that the said village came under consolidation operations by issuance of Notification under Section 4-A of Consolidation of Holdings Act, 1953 in the year 2008 and application was made by opposite parties no. 3 to 6 under Section 9 of the Act, 1953 for recording the name on the basis of sale deed executed by Smt. Zohra Bibi in their favour on 29.1.1999. The Consolidation Officer allowed the objections on 8.6.2012 and passed the orders for recording the name of opposite parties no. 3 to 6 in the revenue record in place of Shakeel Ahmad. When Saddique the father of the petitioner came to know about the order dated 8.6.2012, he had moved an application for recall and the ex-parte order was recalled.

9. The Consolidation Officer by means of order dated 22.6.2023 allowed the objections filed by Sadique and directed that his name be recorded in place of Shakeel Ahmad son of Mohd. Nasir as being successor.

10. The opposite parties no. 3 to 6 filed an appeal on 23.7.2023 under Section 11 Act of 1953 before the Settlement Officer, Consolidation challenging the order dated 22.6.2023 which appeal was dismissed by means of order dated 9.5.2025 and the order of Consolidation Officer dated 22.6.2023 was affirmed.

11. Aggrieved by the order dated 9.5.2025, the opposite parties no. 3 to 6 filed a revision before the Deputy Director of Consolidation which has been allowed by means of the impugned order dated 27.6.2025 and the matter has been remanded to the Consolidation Officer and the order of the Appellate Authority dated 9.5.2025 has been set aside.

12. Counsel for the petitioner while assailing the impugned order has submitted that the Deputy Director of Consolidation has illegally and arbitrarily remanded the matter back to the Consolidation Officer despite there being sufficient material available on record for deciding the matter himself rather than remanding the matter, afresh before the Consolidation Officer. He submits that the law in this regard has been reiterated by this Court in several cases. The Deputy Director of Consolidation in exercise of power under Section 48 of the Act 1953 has sufficient power to take evidence and also re-appreciate the evidence and decide the entire controversy himself rather thatn remanding the case back to the trial court. He has relied upon the judgment in the case of **Afsar Ali**

Khan and others Vs. Liyakat Khan and others [2025 (166) RD 233] and Angad Pratap Singh and others Vs. Deputy Director Consolidation and others [2023(41) LCD 604].

13. Counsel for the respondents, on the other hand, opposed the writ petition. They have submitted that a perusal of the order of the Consolidation Officer itself would indicate that the stand of the petitioner before all the Authorities has been wavering and even different dates of death of Shakeel i.e. 2006, 1991, 1989 and 18.8.2021 has been mentioned by him in the proceedings which is relevant for deciding the present controversy.

14. It has been submitted that after the death of Nasir the property devolved upon Sahkeel being the legal heir and son of Nasir. It has been further stated that Smt. Zohra Bibi has re-married after the death of Nasir and as per the provision of Section 171 of U.P. Z.A. & L.R. Act the property would revert to Sadique son of Mohd. Khalique is the male lenient descendant and the elder brother of Nasir.

15. Apart from the above, with regard to the aspect of remarriage of Smt. Zohra Bibi, I find that only an oral assertion was made before the Consolidation Officer and there was no material document or evidence placed to indicate the same. Even with regard to the death of Mohd. Nasir only a photo copy was produced and according to the Settlement Officer, Consolidation the same was not be proved.

16. It is in the aforesaid facts that this Court is called upon to examine the legality and validity of the order passed by the Deputy Director of Consolidation and also as to whether in the peculiar circumstances of the case whether he could have decided the controversy himself or has committed any error in remanding the matter back to the Consolidation Officer. The Deputy Director of Consolidation has firstly considered the fact undoubtedly against the order of mutation dated 27.11.1992 where the name of Smt. Zohra Bibi was deleted and the name of Sadique was mutated and no appeal was filed by her but in 1997 she got her name recorded in the revenue record through P.A. 11. Secondly the date of death of Shakeel Ahmad is also not clear from the record as 4 different dates have been mentioned with regard to the death of Shakeel Ahmad i.e. 2006, 1991, 1989 and 18.8.2021.

17. Now, the question arises as to whether the Deputy Director of Consolidation has rightly and in accordance with law has set-aside the judgment and order of the Trial Court and remanded the matter for decision afresh in accordance with the directions and observations or the revisional Court could have framed the issues and referred the matter to the Trial Court for taking evidence on them and after trying recorded it's findings and decided the appeal.

18. The provision of remand made in Rule-23, 23-A and 25 of Order XLI of CPC are relevant for considering the above issue, which are extracted here-in-below:-

"23. Remand of case by Appellate Court.- Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so

remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

The Following Allahabad High Court Amendment has been made in aforesaid Rule 23:

a. (i) Insert he following after the words 'and the decree is reversed in appeal", namely: "or where the Appellate Court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, it"; and

(ii) delete the words "the Appellate Court" occurring thereafter and delete also the words "if it thinks fit", occurring after the words "may".

23.(A)- Remand in other cases- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 24□..

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from. - Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.

19. In view of above, Rule 23 as amended by the Allahabad High Court *is 'where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal or where the Appellate Court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, it may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.'*

20. The aforesaid Rule 23(A) provides in regard to the appeal, which has been preferred against the decree which has been made otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23. In both the aforesaid rules, the power of First Appellate Court is one and the same as

given in Rule 23 according to which, in case of reversal of a decree in appeal the Appellate Court may remand the case for re-trial. Rule 25 provides the contingencies in which the Appellate Court can frame the issues and refer the matter to the Trial Court for taking evidence on them and trying the said issues, who shall send then to the same with it's findings thereon to the Appellate Court and the Appellate Court can decide the appeal accordingly.

21. Rule 25 of Order XLI C.P.C. provides that where the court from whose decree the appeal is preferred has omitted to frame or try any issue or to determine any question of fact, which is essential to the right decision of the suit upon merits, the Appellate Court may frame the said issues and refer to the concerned court for trial of same after taking evidence and referring to the Appellate Court with it's findings and reasons thereon and then the Appellate Court may decide the appeal. Thus this procedure can be followed only if the Trial Court has omitted to frame or try any issue or determine any question of fact whereas in the present case the Trial Court has failed to follow the due procedure of law in deciding the suit as indicated above, therefore, this Court is of the view that this procedure could not have been followed by the Trial Court and it has rightly an in accordance with law has set-aside the judgment and order passed by the Trial Court and remanded the matter for a fresh decision.

22. The Hon'ble Supreme Court, in the case of Syeda Rahimunnisa Vs. Malan Bi (dead) by L.R.s and Another, (2016) 10 SCC 315, has held that the power of the Appellate Court to remand the case to a subordinate court is contained in order XLI Rule 23, 23-A and 25 of C.P.C. It is, therefore, obligatory upon the appellant to bring the case under any of these provisions before claiming a remand and the Appellate Court is required to record reasons as to why it has taken recourse to any one out of three Rules of Order XLI of C.P.C. for remanding the case to the Trial Court. Relevant paragraph 35 is extracted here-in-below:-

"35. It is a settled principle of law that in order to claim remand of the case to the Trial Court, it is necessary for the appellant to first raise such plea and then make out a case of remand on facts. The power of the Appellate Court to remand the case to subordinate court is contained in order XLI Rule 23, 23-A and 25 of C.P.C. It is, therefore, obligatory upon the appellant to bring the case under any of these provisions before claiming a remand. The Appellate Court is required to record reasons as to why it has taken recourse to any one out of the three Rules of Order XLI of C.P.C. for remanding the case to the Trial Court. In the absence of any ground taken by the respondents (appellants before the First Appellate Court and High Court) before the First Appellate Court and the High Court as to why the remand order in these cases is called for and if so under which Rule of Order XLI of CPC further in the absence of any finding, there was no justification on the part of the High Court to remand the case to the Trial Court. The High Court instead should have decided the appeals on merits. We, however, do not consider proper to remand the case to High Court for deciding the appeals on merits and instead examine the merits of the case in these appeals."

23. The Hon'ble Supreme Court, in the case of **Sree Panimoola Devi Temple and others Vs. Bhuvanchandran Pillai**

and others, (2015) 12 SCC 698, has held that if the plaintiffs had not led sufficient evidence to establish their case, as held by the High Court, ordinarily, that should have been the end of the matter and in such circumstances, remand of the suit for de-novo consideration virtually gives to the plaintiffs a second opportunity to establish their case. This Court is of the view that this judgment relied by the learned counsel for the appellant is not applicable on the facts and circumstances of the present case because in the present case the learned Trial Court has failed to follow the due procedure of law and afford opportunity in accordance with law.

24. The Hon'ble Supreme Court, in the case of Jagannathan Vs. Raju Sigamani and Another, (2012) 5 SCC 540, has held that where the Trial Court has disposed of the Suit on merits and the decree is reversed in appeal and the Appellate Court considered that retrial is necessary, the Appellate Court may remand the suit to the Trial Court. The relevant paragraph-7 is extracted here-in-below:-

"(7) Order 41 Rule 23A has been inserted in the Code by Act No. 104 of 1976 w.e.f. February 1, 1977. According to Order 41 Rule 23A of the Code, the Appellate Court may remand the suit to the Trial Court even though such suit has been disposed of on merits. It provides that where the Trial Court has disposed of the Suit on merits and the decree is reversed in appeal and the Appellate Court considers that retrial is necessary, the Appellate Court may remand the suit to the Trial Court."

25. The Hon'ble Supreme Court in the case of **P. Purushottam Reddy and Another Vs. Pratap Steels Ltd., (2002) 2 SCC 686** has held that the Appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 C.P.C. and an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided. This case is not applicable in the facts and circumstances of the present case because in the present case as discussed above and also as per the findings recorded by the First Appellate Court, the First Appellate Court has rightly and in accordance with law has remanded the case.

26. The Hon'ble Supreme Court, in the case of **Maya Devi (Dead) through LRs Vs. Raj Kumari Batra (Dead), (2010) 9 SCC 486**, has held that whether or not the Appellate Court should remit the matter is discretionary with the Appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. The relevant paragraph- 17 is extracted here-in-below:-

"(17). Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An Appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the Appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An Appellate Court or authority may in a given case decline to undertake any such exercise

and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an Appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the Appellate Court should remit the matter is discretionary with the Appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the Appellate Court is of the view that it will prolong the litigation."

27. The Hon'ble Supreme Court, in the case of **Narayanan Vs. Kumaran and others, (2004) 4 SCC 26** has held that it is quite safe to adopt that appeal under order 43 Rule (1) clause (u) should be heard only on the ground enumerated in Section 100. The relevant paragraph-17 of the judgment is extracted here-in-below:-

"17. It is obvious from the above rule that an appeal will lie from an order of remand only in those cases in which an appeal would lie against the decree if the Appellate Court, instead of making an order of remand, had passed a decree on the strength of the adjudication on which the order of remand was passed. The test is whether in the circumstances an appeal would lie if the order of remand where it is to be treated as a decree and not a mere order. In these circumstances, it is quite safe to adopt that appeal under order 43 Rule (1) clause (u) should be heard only on the ground enumerated in Section 100. We, therefore, accept the contention of Mr. T.L.V.Iyer and hold that the appellant under an appeal under order 43 Rule (1) clause (u) is not entitled to agitate questions of facts. We, therefore, hold that in an appeal against an order of remand under this clause, the High Court can and should confine itself to such facts, conclusions and decisions which have a bearing on the order of remand and cannot canvass all the findings of facts arrived at by the Lower Appellate Court."

28. This Court in the judgment dated 30.04.2019 passed in the case **of Gulab Chand v. D.D.C**. reported in **2019 SCC OnLine All 4756** has observed as under:-

"14. This Court has given a thoughtful consideration to rival submissions advanced on both sides. It is true, no doubt, that powers of the Deputy Director of Consolidation under Section 48 of the Act have always been regarded as wide, though inhibited in some regard, being a Court of Revision. The import of the powers of the Deputy Director of Consolidation under Section 48 of the Act as they have been always understood has been succinctly laid down by the Supreme Court in Sheo Nand v. Deputy Director of Consolidation, Allahabad, (2000) 3 SCC 103, where in para graphs 20 & 21 of the report, it has been held:

20. The section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity, and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms

so that the claims of the parties under the Act may be effectively adjudicated upon and determined to confer finality to the rights of the parties, and the revenue records may be prepared accordingly.

21. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to reappraise or re-evaluate the 18 evidence-on-record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law.

29. The Supreme Court in the case of **Sheo Nand vs. D.D.C., Allahabad, (2000) 3 SCC 103** also said that, *it would be the duty of the Deputy Director to scrutinise the whole case so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him.*

30. Accordingly, in the light of the contradictory facts which have emerged going to the root of the matter, a proper adjudication was not possible and it is only after verifying the correct facts and recording further evidence the matter could have been adjudicated and for the said reason he has remanded the matter back to the Consolidation Officer for decision afresh.

31. Considering the aforesaid facts, this Court is of the considered view that undoubtedly the Deputy Director of Consolidation is clothed with sufficient power to decide the matter himself but such an exercise of power would be valid when the entire evidence is available on record and merely after oral hearing of the parties, the matter could be adjudicated and decided finally but when the Deputy Director of Consolidation is of the view that further evidence is required to be adduced which may require examination of the witnesses and also the cross examination by the other parties there in such a situation he may exercise such a discretion either to proceed with the matter himself or to remand the matter to the trial court.

32. Accordingly, in the facts of the present case, the Deputy Director of Consolidation has duly considered the entire facts and also clearly recorded the inadequacies and inaccuracies in the essential facts which are available on record which necessitate further re-inquiry and evidence, for which purpose the matter has been remitted to the trial court and such exercise of discretion cannot be faulted.

33. Accordingly, it is for the aforesaid reasons that this Court does not find any infirmity in the order of Deputy Director of Consolidation. In the remand proceedings, the Consolidation Officer

shall proceed and decide the matter afresh after adequate evidence and conclude the proceedings, expeditiously, say within a period of three months from date of production of a certified copy of this order.

34. The parties are directed to cooperate in the proceeding.

35. Accordingly, I do not find any infirmity in the impugned order dated 27.06.2025. The writ petition being devoid of merits is hereby **dismissed.**

(2025) 9 ILRA 1059
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.09.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ - C No. 8327 of 2025

Huzaifa Khan & Anr. ...Petitioners
Versus
The State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Manish Jauhari, Ambuj Kumar Bajpai

Counsel for the Respondents:
C.S.C., P.K. Sinha

Issue for Consideration

Whether, the respondents, being unaided private school, are not amenable to all the provisions of the RTE Act and their obligations in terms of the Act, is confined only to the prescriptions contained under section 12 of the Act and whether the private unaided schools are liable to the mandate of Section 16 or not**?**

Head Notes

Right of Children to Free and Compulsory Education Act, 2009-Section 12 & 16, The Constitution of India, 1950-Article 21-A - No prescription has been issued in terms of the mandate of Section 16(3) in the State of U.P. - Clear violation of rights of the children flowing from Section 16 (2) of the Act. The action of the respondent school in expelling the students is also violative of Section 16 (4) of the Act - Guidelines of the affiliating Board will have to yield to the mandate of the Act and cannot be given precedence over the Act - Writ petition allowed. (E-15)

Held- All the provisions of the Act including Section 16 of the RTE Act are applicable to the respondent school.
(Para 12,13 & 14)

Case Law Cited

Society for Unaided Private Schools of Rajasthan vs. Union of India and another; (2012) 6 SCC 1;

List of Acts

Right of Children to Free and Compulsory Education Act, 2009, The Constitution of India-1950

List of Keywords

Prescriptions contained in the RTE; Right of Children to Free and Compulsory Education Act, 2009; Detention contrary; Article 21-A; Unaided private school amenable to all the provisions of the RTE; Guidelines of the affiliating Board will have to yield to the mandate of the Act

Case Arising From

The present petition has been filed by the petitioners, who are two in number through their father and natural guardian, stating that the petitioner no.1aged about 11 years is studying at the respondent no.4 school, in Class V and the petitioner no.2 who is aged about 14 years is studying in Class IX. It is stated that both the children are outstanding sportsman and besides pursuing their studies with the respondent no.4 are also pursuing the skills in cricket and they have joined a Cricket Academy at Lucknow. It is stated that, although the petitioners have never been detained in past, have now been detained in the examination held for the session 2024-2025, in respect of the petitioner no.1 and vide progress report of the petitioner no.2 for the examination 2024-2025.

Appearances for Parties
Counsel for Petitioners(s): Manish Jauhari, Ambuj Kumar Bajpai
Counsel for Respondent(s): C.S.C., P K Sinha

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard the counsel for the petitioner, learned Standing Counsel and Sri P. K. Sinha the counsel for the respondents no. 3 and 4.

2. The present petition has been filed by the petitioners, who are two in number through their father and natural guardian, stating that the petitioner no.1aged about 11 years is studying at the respondent no.4 school, in Class V and the petitioner no.2 who is aged about 14 years is studying in Class IX. It is stated that both the children are outstanding sportsman and besides pursuing their studies with the respondent no.4 are also pursuing the skills in cricket and they have joined a Cricket Academy at Lucknow. It is stated that, although the petitioners have never been detained in past, have now been detained in the examination held for the session 2024-2025, in respect of the petitioner no.1 and vide progress report of the petitioner no.2 for the examination 2024-2025.

3. The contention of the counsel for the petitioner is that in terms of the prescriptions contained in the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred as 'RTE Act'), the detention of the petitioner no.1 as well as the petitioner no.2 is contrary to the prescriptions contained in the RTE Act and also violates their rights under Article 21-A of the Constitution of India. It is stated that the respondents authorities were unhappy with the petitioners as, they were pursuing their hobby in Cricket and on account of the said grievance, they are not being permitted to undergo examination afresh, even if the respondent no.4 was of the view that, the petitioners needed improvement in their academic performance they ought to have been given a chance to appear in re-examination. It is further argued that the detention of the petitioners was contrary to the prescriptions contained in the RTE Act.

4. The respondent no 4 school has filed counter affidavit stating that although the petitioners have a right of free and compulsory education, guaranteed by Article 21-A read with the Act, however, it is emphasized that both the students were not having the requisite attendance and also did not qualify the examination and not detaining, students similar to the petitioners, affects the academic schedule and reputation of the school in question. It is further argued that, in terms of the prescriptions contained under the Act in question, the respondents, being unaided private school, are not amenable to all the provisions of the RTE Act and their obligations in terms of the Act, is confined only to the prescriptions contained under section 12 of the Act. It is further argued that Section 16 of the Act cannot be interpreted to apply to the general students in the same fashion as to the students who get benefits of Section 12(1)(c) so as to reduce their competence and excellence by giving them freedom of not to work towards excellence, not to learn, become ruffians of the school so as to disturb the entire atmosphere of the school in question. It is further argued that if, the school is not allowed to fail/detain students, the teachers would also stop paying attention to the children and in that case, even the teachers cannot be evaluated by the Management appropriately. In the light of the said, it is argued that both the petitioners, do not

have the necessary minimum attendance also.

5. With regard to the petitioner no.1, it is stated that he had secured only 41.67% marks and the student's attendance was 57.8% and despite being made aware that 75% attendance is compulsory, he did not take any steps for avoiding the shortage of attendance while the student was in Class III and despite the same, he was promoted. In the academic session 2023-2024, his attendance percentage was down to 36% and attendance to 55.24% which is less than 75% attendance, which is made compulsory by the ICSE Rules, to which the respondent no.4 institution is affiliated. Similarly with regard to petitioner no.2, it is stated that his performance was below par and the attendance was also less. It is stated that in terms of the 'Discipline Rules' of school, minimum attendance is required 90%, failing which, the child is not permitted to undergo the examination.

6. It is also stated that the petitioner no.2 was given warning which was signed by the father of the petitioner no.2 himself. It is also stated that the father of the petitioner no.2 gave in writing that the petitioner no.2 would not be in a position to attend the remedial classes and the result will be his responsibility. It is also stated that the result of the petitioner no.2 has already been sent to the ICSE Board. In the light of the said, it is stated that the writ petition is liable to be dismissed.

7. Reliance is placed upon the judgment of the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan vs. Union of India and another; (2012) 6 SCC 1** with emphasis on paragraphs 37 to 48 as well as paragraph 64, which are quoted herein below:

"37. Thus, from the scheme of Article 21-A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age 6 to 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g) so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6).

38. The 2009 Act not only encompasses the aspects of right of children to free and compulsory education but to carry out the provisions of the 2009 Act, it also deals with the matters pertaining to establishment of school(s) as also grant of recognition (see Section 18). Thus, after the commencement of the 2009 Act, the private management intending to establish the school has to make an application to the appropriate authority and till the certificate is granted by that authority, it cannot establish or run the school. The matters relevant for the grant of recognition are also provided for in Sections 19, 25 read with the Schedule to the Act. Thus, after the commencement of the 2009 Act, by virtue of Section 12(1)(c) read with Section 2(n)(iv), the State, while granting recognition to the private unaided non-minority school, may specify permissible percentage of the seats to be earmarked for children who may not be in a position to pay their fees or charges.

39. In T.M.A. Pai Foundation [(2002) 8 SCC 481] , this Court vide para 53 has observed that the State while prescribing qualifications for admission in a private unaided institution may provide for condition of giving admission to small percentage of students belonging to weaker sections of the society by giving them freeships, if not granted by the Government. Applying the said law, such a condition in Section 12(1)(c) imposed while granting recognition to the private unaided non-minority school cannot be termed as unreasonable. Such a condition would come within the principle of reasonableness in Article 19(6).

40. Indeed, by virtue of Section 12(2) read with Section 2(n)(iv), a private unaided school would be entitled to be reimbursed with the expenditure incurred by it in providing free and compulsory education to children belonging to the above category to the extent of per child expenditure incurred by the State in a school specified in Section 2(n)(i) or the actual amount charged from the child, whichever is less. Such a restriction is in the interest of the general public. It is also a reasonable restriction. Such measures address two aspects viz. upholding the fundamental right of the private management to establish an unaided educational institution of their choice and, at the same time, securing the interests of the children in the locality, in particular, those who may not be able to pursue education due to inability to pay fees or charges of the private unaided schools.

41. We also do not see any merit in the contention that Section 12(1)(c) violates Article 14. As stated, Section 12(1)(c) inter alia provides for admission to Class I, to the extent of 25% of the strength of the class, of the children belonging to weaker sections and disadvantaged group in the neighbourhood and provide free and compulsory elementary education to them till its completion. The emphasis is on □free and compulsory education□. Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. Further, Section 12(1)(c) provides for a level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees.

42. As stated above, education is an activity in which we have several participants. There are number of stakeholders including those who want to establish and administer educational institutions as these supplement the primary obligation of the State to provide for free and compulsory education to the specified category of children. Hence, Section 12(1)(c) also satisfies the test of reasonableness, apart from the test of classification in Article 14.

43. The last question which we have to answer under this head is whether Section 12(1)(c) runs counter to the judgments of this Court in T.M.A. Pai Foundation [(2002) 8 SCC 481] and P.A. Inamdar [(2005) 6 SCC 537] or principles laid down therein?

44. According to the petitioners, T.M.A. Pai Foundation [(2002) 8 SCC 481] defines various rights and has held vide para 50 that right to establish and administer educational institutions broadly comprises the following: (i) right to admit

students, (ii) right to set up a reasonable fee structure, etc. (the rest are not important for discussion under this head). That, T.M.A. Pai Foundation [(2002) 8 SCC 481] lays down the essence and structure of rights in Article 19(1)(g) insofar as they relate to educational institutions in compliance with (a) the charity principle, (b) the autonomy principle, (c) the voluntariness principle, (d) anti-nationalisation, (e) co-optation principle. In support, reliance is placed by the petitioners on a number of paragraphs from the above two judgments.

45. At the outset, we may reiterate that Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State. However, the manner in which this obligation will be discharged by the State has been left to the State to determine by law. The State may do so through its own schools or through aided schools or through private schools, so long as the law made in this regard does not transgress any other constitutional limitation. This is because Article 21-A vests the power in the State to decide the manner in which it will provide free and compulsory education to the specified category of children. As stated, the 2009 Act has been enacted pursuant to Article 21-A.

46. In this case, we are concerned with the interplay of Article 21, Article 21-A, on the one hand, and the right to establish and administer educational institution under Article 19(1)(g) read with Article 19(6). That was not the issue in T.M.A. Pai Foundation [(2002) 8 SCC 481] nor in P.A. Inamdar [(2005) 6 SCC 537] . In this case, we are concerned with the validity of Section 12(1)(c) of the 2009 Act. Hence, we are concerned with the validity of the law enacted pursuant to Article 21-A placing restrictions on the right to establish and administer educational institutions (including schools) and not the validity of the scheme evolved in Unni Krishnan, J.P. v. State of A.P.[(1993) 1 SCC 645]

47. The above judgments in T.M.A. Pai Foundation [(2002) 8 SCC 481] and P.A. Inamdar [(2005) 6 SCC 537] were not concerned with interpretation of Article 21-A and the 2009 Act. It is true that the above two judgments have held that all citizens have a right to establish and administer educational institutions under Article 19(1)(g), however, the question as to whether the provisions of the 2009 Act constituted a restriction on that right and if so whether that restriction was a reasonable restriction under Article 19(6) was not in issue.

48. Moreover, the controversy in T.M.A. Pai Foundation [(2002) 8 SCC 481] arose in the light of the scheme framed inUnni Krishnan case [(1993) 1 SCC 645] and the judgment in P.A. Inamdar[(2005) 6 SCC 537] was almost a sequel to the directions in Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697] in which the entire focus was institution-centric and not child-centric and that too in the context of higher education and professional education where the level of merit and excellence have to be given a different weightage than the one we have to give in the case of Universal Elementary Education for strengthening social fabric of democracy through the provision of equal opportunities to all and for children of

weaker sections and disadvantaged group who seek admission not to higher education or professional courses but to Class I.

64. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) ***an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."***

8. The counsel for the respondents has argued that, paragraph 64 of the judgment cannot be read in isolation and the directions given by the Supreme Court are only in respect of the obligations cast upon the private schools and recorded in para 37 onwards. Thus, it is said to be argued that the entire RTE Act is not applicable to an unaided non-minority schools not receiving any kind of aid or grants to meet its expenses.

9. In the light of the said, it is essential to notice the mandate of the Right of Children to Free and Compulsory Education Act, 2009. The RTE Act in question was framed in pursuance to, the Right of Education included in the Constitution by virtue of Article 21-A. The RTE Act, was enacted to provide for free and compulsory education to all the children. Section 2(n) of the Act defines 'school' as under :

"2. Definitions- *In this Act, unless the context otherwise requires, -*

(n) □school□ means any recognised school imparting elementary education and includes□

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"

Section 3 is the salutary promise flowing from the Act of ensuring free and compulsory education to every child of the age of six to fourteen years. Section 12 provides for responsibilities of the schools and teachers for providing free and compulsory education, which is as under :

"12. Extent of school's responsibility for free and compulsory education. - (1) For the purposes of this Act, a school,□

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free

and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

Section 16 of the Act, which is the bone of contention of interpretation in the present case, provides for examination and holding back of the students in certain cases, which is as under :

"16. Examination and holding back in certain cases *- (1) There shall be a regular examination in the fifth class and in the eighth class at the end of every academic year.*

(2) If a child fails in the examination referred to in sub-section (1), he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result.

(3) The appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes, in such manner and subject to such conditions as may be prescribed, if he fails in the re-examination referred to in sub-section (2):

Provided that the appropriate Government may decide not to hold back a

child in any class till the completion of elementary education.

(4) No child shall be expelled from a school till the completion of elementary education."

10. In the present case, the petitioner no.1 was declared as failed and is aged about 11 years whereas the petitioner no.2 was declared as failed and is aged about 14 years. The said two students were detained on account of their poor academic performance as well as they not achieving the requisite attendance.

11. In the present case, the first issue to be decided is whether, the private unaided schools are liable to the mandate of Section 16 or not. Paragraph 64 of the judgment of the Hon'ble Supreme Court in the case of Society for Unaided Private Schools of Rajasthan (supra) is clear that the Act in whole, is applicable to all the schools as defined under section 2(n) of the RTE Act. The distinction as sought to be interpreted by the counsel for the respondents that the private unaided school, are only to follow the mandate of Section 12 and not the other provisions, merits rejection solely on the ground of interpretation of the Act and its applicability to the private aided schools by virtue of the judgment of the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan (supra).**

12. The argument of the counsel for the respondents, based upon the provisions of para 37 onwards of the said judgment, also merits rejection as the Supreme Court although was dealing with the validity of Section 12(1)(c) of the RTE Act has categorically held in para 64, as recorded above, and it is not open for this Court, to adopt any other interpretation, as is being argued by the counsel for the respondents. Thus, it is categorically held that all the provisions of the Act including Section 16 of the RTE Act are applicable to the respondents school also. In the present case, there is a clear violation of the mandate of Section 16(2) of the RTE Act.

13. It is also necessary to refer that, no prescription has been issued in terms of the mandate of Section 16(3) in the State of U.P. Thus, there being a clear violation of rights of the children flowing from Section 16 (2) of the Act. The action of the respondents school in expelling the students is also violative of Section 16 (4) of the Act.

14. It is also essential to notice that the action against the two students is founded on the internal discipline guidelines of the school as well as guidelines of minimum attendance issued by the affiliating board that is ICSE, however as the appropriate Government ,in the present case the State of UP, has not issued any prescriptions under Section 16 of the RTE Act the said internal guidelines and guidelines of the affiliating Board will have to yield to the mandate of the Act and cannot be given precedence over the Act.

15. Thus, for all the reasons recorded above, the writ petition is liable to be allowed with directions to the respondents to readmit the petitioner no.1 and permit him to pursue the studies in Class VIth after granting him an opportunity of re-examination within a period of two months. Similarly the petitioner no.2 shall also be readmitted to Class IXth as the requisite records of students passing Class IXth have already been uploaded on the website of ICSE and

it may not be possible for the petitioner no.2 to take examination in Class Xth for this academic year and keeping in view his performance on the academic side, the respondent no.4 shall permit the petitioner no.2 to undergo the studies for Class IXth.

16. The writ petition stands ***allowed*** in terms of the said directions.

(2025) 9 ILRA 1067
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.09.2025

BEFORE

THE HON'BLE MAHESH CHNADRA TRIPATHI, J.
THE HON'BLE ANISH KUMAR GUPTA, J.

Writ - C No. 21150 of 2014

Rishi Kumar Jain & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Ram Prakash Srivastava

Counsel for the Respondents:
S.C., Ravi Anand Agarwal

Issue for Consideration

A) Whether the provisions of Section 24 (2) of the Act, 2013 would apply to the acquisition made under the Adhiniyam, 1965?
B) Whether under the facts and circumstances, the benefit under Section 24 (2) of the Act, 2013 would be applicable?
C) Whether the proceeding is barred by delay and laches?

Head Notes

The Constitution of India, 1950-Article 226; The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965-Sections 28, 32 ; The Land Acquisition Act, 1894- Section 17; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013- Section 24 - Petitioners have chosen multiple forums and instituted several cases, which resulted in delay of the proceedings - Against the acquisition the petitioners' father had already approached to the Supreme Court but the same had been negated by the Supreme Court and the acquisition was upheld. The petitioners' father as well as the petitioners had also knocked the doors of various authorities/ courts but eventually they failed to get any relief from anywhere. The possession of the land had been taken by the authorities and the same had been transferred to the Trust. On the said land institution had also been built, which is also imparting education to students. We find that once the land vested in the State, the same is free from all encumbrances, it cannot be divested or revested- The stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24 - Petition dismissed.

Held-
A) The contention relating to lapsing of acquisition under Section 24 (2) of the Act, 2013 when the land was acquired under the provisions of the Act, 1894 would, therefore, not come to the aid of the petitioner.
B) The proceeding had been challenged in different forums and initially interim injunction was also obtained but it is apparent that the acquisition had been upheld upto Supreme Court. Once the award has been made, it was not open for the petitioner to challenge the notification under Section 28 of the Adhiniyam, 1965.
C) At this belated stage the petitioner cannot be permitted to revive the dead and stale claims. (E-15)
(Para 30,33,46 & 47)

Case Law Cited

Atul Sharma & Ors. v. State of U.P. & Ors L. A. No. 159 of 2014; Jagbeer Singh & Ors. v. State of U.P. & Ors 2018 (2) AWC 1639; Indore Development Authority v. Manoharlal & Ors SLP (C) Nos. 9036 – 9038 of 2016 dt. 6.3.2020; Urban Development Trust, Udaipur v. Bheru Lal

& Ors 2003 (1) AWC 73 (SC); State of U.P. v. Smt. Pista Devi & Ors AIR 1986 SC 2025; State of Rajasthan & Ors. v. D.R. Laxmi & Ors (1996) 6 SCC 445; Ramniklal N. Bhutta vs. State of Maharashtra (1997) 1 SCC 134; Swaika Properties Pvt. Ltd. & Anr. v. State of Rajasthan & Ors (2008) 4 SCC 695; Gajraj & Ors. v. State of U.P. & Ors 2011 (11) ADJ 1 (FB); Satendra Prasad Jain v. State of U.P. & Ors AIR 1993 SC 2517; Aflatoon & Ors. v. Lt. Governor of Delhi & Ors (1975) 4 SCC 285; Kendriya Karamchari Evam Mitra Sahkari Avas Samiti Ltd. and Anr. v. State of U.P. and Anr 1988 UPLBEC 645; V. Chandrasekaran & Anr. v. The Administrative Officer & Ors CIVIL APPEAL No. 6342 – 6343 of 2012 decided on 18.9.2012;

List of Acts

The Constitution of India, 1950; The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965; The Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

List of Keywords

Petitioner cannot be permitted to revive the dead and stale claims; award been made, Not open for the petitioner to challenge the notification under Section 28 of the Adhiniyam, 1965; Multiple forums and instituted several cases instituted

Case Arising From

Parishad proposed to acquire the land for its "Sikandra Grah Sthan and Sarak Yojana at Agra" and published a notification under Section 28 dated 04.04.1970 and declaration under Section 32 dated 28.06.1080 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 . As there was an urgency, a notification dated 23.01.1981 was issued under Section 17 of the Land Acquisition Act, 1894 notifying the lands of the petitioners.

Appearances for Parties

Counsel for Petitioners(s) : Ram Prakash Srivastava

Counsel for Respondent(s) : Standing Counsel, Ravi Anand Agarwal

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri Pramod Jain, learned Senior Counsel assisted by Shri Ram Prakash Srivastava, learned counsel for the petitioners; Shri Suresh Singh, learned Addl. Chief Standing Counsel and Shri Fuzail Ahmad Ansari, learned Standing Counsel for State respondents and Shri Ravi Anand Agarwal, learned counsel for U.P. Awas Evam Vikas Parishad1.

2. The instant writ petition has been preferred for following reliefs:-

(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 6.2.2012 by the respondent no.1 (Annexure-15);

(ii) to issue a writ, order or direction in the nature of certiorari quashing the entire acquisition proceeding initiated by Notification dated 4.4.1970 and 28.6.1980 issued under Section 28 and 32 of the U.P. Avas Evam Vikas Parishad Adhiniyam insofar as it relates to the land of the petitioners comprised in Khasra Plot No.898, 899, 901, 902, 905, 906 and 909 situated at Kakretha, Tehsil and District Agra, within the Section No.10 of the Yojana;

(iii) to issue a writ, order or direction declaring the acquisition proceedings against the petitioners land as described above in prayer (ii) deemed to have lapsed;

(iv) to issue a writ, order or direction in the nature of mandamus commanding the respondents to give vacant and peaceful possession of the land described above to the petitioners;

(v) to issue a writ, order or direction in the nature of mandamus commanding the respondents to settle/ adjust the land of the petitioners in their favour as per Government Order dated 11.3.2003;

(vi) to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay compensation of the land acquired by virtue of the aforesaid notification at the current market value and in accordance with the Act 30 of 2013;

A. **ARGUMENTS ON BEHALF OF THE PETITIONERS**

3. It is contended that the petitioners father Late Raj Narain Jain was the bhumidhar in possession of the lands comprised in Khasra Plot No.898, 899, 901, 902, 905, 906 and 909 situated at Kakretha, Tehsil and Distt. Agra. After his death, the petitioners have inherited the same as legal heirs of their deceased father.

4. The Parishad proposed to acquire the aforesaid land along with other lands for its Sikandra Grah Sthan and Sarak Yojana at Agra2 and published a notification under Section 28 dated 04.04.1970 and declaration under Section 32 dated 28.06.1080 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 19653. As there was an urgency, a notification dated 23.01.1981 was issued under Section 17 of the Land Acquisition Act, 18944 notifying the lands of the petitioners. The petitioners land falls within Sector 10 of the Scheme in question and they submitted their objection against the aforesaid notification on 04.04.1970.

5. The petitioners father challenged the said notifications published under Section 28 and 32 of the Adhiniyam, 1965 before the Hon ble Supreme Court by means of Writ Petition No.2136-2137 of 1982, which was dismissed on 07.04.1993 and the Hon ble Supreme Court upheld the validity of the aforesaid two notifications.

6. At the dismissal of the aforesaid writ petition, Shri Raj Narain Jain filed O.S. No.892 of 1993 for permanent injunction against Parishad seeking an order restraining them from interfering in his peaceful possession. In the said suit, initially temporary injunction was accorded on 23.03.1994. However, eventually the said injunction was set aside vide order dated 12.02.1998. During pendency of said suit, Shri Raj Narain died leaving behind his eight legal heirs including the petitioners. Eventually the said suit was dismissed on 8.3.2000. Thereafter, out of said eight heirs/ legal representatives of late Raj Narain Jain, only the petitioners had filed Original Suit No.973 of 1999 in the Court of Civil Judge (SD), Agra against the State of U.P. seeking permanent injunction restraining the defendants from interfering in their peaceful possession. Ultimately, the said suit was also dismissed on 18.02.2000.

7. In the meantime, possession of the plots in question was transferred by the State Government to Parishad on 28.12.1999 and it was published in Dainik Jagran dated 29.12.1999. Meanwhile, an area of 20,037 sq. mtrs. of land out of the area of the Scheme in question was allotted to Dr. Virendra Swarup Memorial Trust, Kanpur Nagar5, which is duly registered, and the plots in question are part of the said allotted land. This was done by the Parishad on 29.1.1999 and 24.06.1999. Thereafter, the Parishad executed a lease agreement in favour of the Trust on

30.12.2000 and possession of the plot was handed over to the Trust on 30.12.2000 itself. Thereafter, the Trust submitted the building plan to the Parishad and paid the fee to sanction the same. Then the school building was constructed by Trust and even the name of the school was also recorded in khasra of the village.

8. The petitioners had also filed Original Suit No.5 of 2001 against the Trust seeking permanent injunction restraining the defendant therein from interfering in their possession. In the said suit, initially interim injunction was accorded on 03.01.2001, which subsequently got vacated on 26.05.2001. Aggrieved by the said order, the petitioners filed Misc. Appeal No.113 of 2001 before the District Judge, Agra on 29.05.2001, in which no interim order was accorded and the said appeal is also stated to be pending consideration. Aggrieved by the order of the District Judge refusing to grant temporary injunction, the petitioners filed Writ Petition No.25558 of 2001, which too was dismissed on 16.07.2001. On 8.6.2001, the petitioners had also moved an application before the City Magistrate, Agra and obtained exparte order dated 9.6.2001 to maintain the status quo with respect to land in question. However, the same was vacated by the City Magistrate on 13.06.2001.

9. In addition to filing Original Suit No.973 of 1999, the petitioners had also preferred Writ Petition No.407 of 2000 challenging the proceeding undertaken by the Parishad. In the said writ petition, interim order was accorded on 10.01.2000 to the effect that no final award would be made in the proceeding and that the petitioners shall not be dispossessed, if not already dispossessed. During the pendency of the above-mentioned writ petition, the petitioners also approached the State Government for de-notification/ adjustment of the lands after charging development fees. The State Government passed an order dated 11.03.2003 for adjusting the land in question after taking development charges. Aggrieved with the same, the Parishad moved a recall application before the State Government. The State Government after considering the recall application cancelled the order dated 11.03.2003 vide order dated 24.06.2005. The order dated 24.06.2005 passed by the State Government became subject matter of challenge in Writ Petition No.60335 of 2005. The said writ petition was disposed of on 21.07.2011 and while quashing the order dated 24.06.2005, the matter was remanded to the State Government for fresh consideration. Consequently, after considering the reply filed by the petitioners/ other interested persons, the State Government, by the order impugned, rejected the application for adjustment of the land of the petitioners and also cancelled the G.O. dated 11.3.2003, which was earlier issued by the State Government. Hence, this writ petition has been filed with aforequoted prayers.

B. ARGUMENTS ON BEHALF OF THE RESPONDENT- PARISHAD

10. Learned counsel for the Parishad has vehemently opposed the writ petition. He states that the petitioner□s father Raj Narain Jain has challenged the notifications of the acquisition of the plots in dispute before the Hon□ble Apex Court in Writ Petition (C) Nos.2136-2137 of 1982. Hon□ble the Supreme Court had affirmed the notifications of the acquisition under Section 28 and 32 (1) of the Adhiniyam, 1965. The petitioners had been challenging

the acquisition of the plots in dispute on one ground or the other before the civil court and this Court. In most of the proceedings, the petitioners had initially obtained the interim orders arresting the proceedings of the acquisition. However, eventually almost all the interim orders had been vacated and the claim of the petitioners had been rejected. The delay in taking possession and declaring the award of the plots in dispute have occurred due to frivolous litigations initiated by the petitioners in a planned manner. The amount of compensation of the land in dispute have already been deposited by the Parishad to the account of the Special Land Acquisition Officer6 on 21.07.1999.

11. The possession of the land of the plots in dispute including the other land was delivered to the Parishad on 28.12.1999 and thereafter the allotment of some area of land was made to the Trust. The possession of land allotted to the Trust was delivered on 30.12.2000. Over the said land, school building had already been constructed and the Trust is imparting education to the students upto 12th standard. The allotment of land in favour of Trust was made only for educational purposes. The allotment was made only when the land had been vested with the Parishad. The allotment order was made as per the policy of the scheme.

12. The SLAO vide notice dated 22.12.1999 sent an intimation for receiving the amount of compensation and the said notice had been received by the family members of the land owner-Raj Narayan. Instead of accepting the compensation, the petitioners have raised flimsy technical objections. The petitioners and his father themselves are responsible for the delay in the matter as they involved the respondents in frivolous litigations. The petitioners started raising claim with respect of applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 20137 for the computation of compensation/ award before various authorities. It is contended that actually the petitioners were never interested in accepting the award. It is also stated that even Section 24 of the Act, 2013 is not applicable in the present case. The Parishad deposited the amount before the SLAO way back in the year 1997 and hence the liability of non-preparation of award cannot be fastened upon the Parishad.

13. Learned counsel for the Parishad has contended that the provisions of Section 24 (2) of the Act, 2013 would not apply to the acquisition made under the provisions of Adhiniyam, 1965. The said issue is no longer res integra in view of the Division Bench judgment of this Court in Atul Sharma & Ors. v. State of U.P. & Ors8., and Jagbeer Singh & Ors. v. State of U.P. & Ors9. Learned counsel for the Parishad has also placed reliance on the averments contained in the counter affidavit filed on behalf of Parishad, wherein, a categorical stand has been taken that regarding land in dispute the respondents had taken physical possession way back. He has submitted that the award of the entire scheme has been made by the SLAO and the adequate compensation had also been deposited in the account of the SLAO. It was also contended that inspite of information to the concerned land owners, the reason best known to the petitioners, they did not lift their compensation, therefore, at this belated stage it cannot be claimed that neither the possession has been taken nor the award has been made.

The entire compensation has been deposited, therefore, present writ petition is liable to be dismissed on the ground of delay and laches. Lastly it has been contended that challenge to the acquisition at this stage cannot sustain in view of the order passed by Hon□ble Apex Court in earlier round of litigation and, therefore, the writ petition is liable to be dismissed with heavy cost.

C. ARGUMENTS ON BEHALF OF STATE RESPONDENTS

14. Shri Suresh Singh, learned Addl. Chief Standing Counsel along with Shri Fuzail Ahmad Ansari, learned Standing Counsel, supporting the arguments of learned counsel for the Parishad, vehemently submitted that the petitioners are themselves responsible for the non-payment of compensation as they have chosen multiple forums and instituted several cases, which resulted in delay of the proceedings. Infact, since the Supreme Court had already upheld the proceedings of acquisition, the same cannot be challenged before this Hon□ble Court in the garb of the present proceeding by giving a different complexion. The impugned order is legal and just, and does not call for any interference.

15. Heard rival submissions and perused the record.

D. ANALYSIS BY THE COURT

16. In the instant matter, what we find that successive litigations were made. Initially the father of the petitioners namely Raj Narain Jain (bhumidhar of plots in question) had straightaway approached to Hon□ble Apex Court in Writ-C No.2136-2137 of 1982 under Section 32 of the Constitution of India challenging the validity of the acquisition proceeding in which initially an interim order was accorded not to dispossess the petitioner. However, eventually the said writ petition was dismissed on 7.4.1993. We are surprised that even though the matter was already decided pertaining to acquisition and no such injunction could be accorded by the competent civil court but reason best known to him, Shri Raj Narain Jain had preferred O.S. No.892 of 1993 in which temporary injunction was, however, accorded on 23.3.1994. Against the same, Misc. Appeal No.224 of 1994 had been filed, which was allowed only on the premise that the disputed site had already been developed and the Parishad had also proceeded to allot the same to public by charging premium from them. During pendency of said suit proceeding, said Raj Narain Jain died leaving behind his legal representatives including the petitioners. Later on the petitioners were impleaded in the said proceeding and eventually the said suit was also dismissed on 8.3.2000.

17. Even though aforesaid suit was dismissed, another suit was instituted by the petitioners being Suit No.973 of 1999 asking for injunction against the State. In the said suit proceeding, initially injunction was accorded but later on the same was dismissed on 18.02.2000. Once there was no legal impediment, State had issued notice under Section 9 of the Act, 1894 and consequently the State Government had taken over the possession on 27.12.1999. Later on the same was transferred to Parishad on 28.12.1999. Thereafter, some portion of the acquired land including the land of the petitioners had been transferred to the Trust.

18. It is also reflected from the record that as the Trust was established for

running the institution, the Parishad has approved the building plan of school and the name of the school was also duly recorded in the Khasra of the village. The petitioners had again instituted another suit being Suit No.5 of 2011 before the Civil Judge, JD, Agra for injunction restraining the defendants from interfering in their possession. Even in that suit proceeding initially exparte injunction was obtained on 3.1.2001 but later on the same was vacated on 26.5.2001. Aggrieved with the same, the petitioners had preferred Misc. Appeal No.113 of 2001 before the District Judge, Agra on 29.05.2001 but no injunction was accorded in the said appeal. Consequently, the petitioners had preferred Writ Petition No.25558 of 2001 that too was dismissed on 16.07.2001. Multiple forums had been availed by the petitioner with an object to get injunction, concealing the previous litigation. It also appears from the record that they had also moved an application to the City Magistrate, Agra in the year 2001 concealing the previous orders passed by the Hon□ble Apex Court and competent civil court and had succeeded to obtain exparte order on 8.6.2001 to maintain status quo regarding the disputed land. No doubt the said order was also vacated by the City Magistrate on 13.06.2001. Thereafter, the petitioners had also preferred suit against each other under Section 176 of UPZA & LR Act impleading the Trust also as opposite party. In the said proceedings, initially exparte status quo order was obtained on 15.6.2001 but later on the same was vacated on 20.06.2001. Eventually the said suit was dismissed on 15.5.2002.

19. We find that inspite of aforesaid successive orders passed by the competent courts, reason best known to him, an application was moved by the petitioners to the State Government, which was initially entertained on 11.03.2003. Later on the Trust had made detailed objections in the proceeding, which was pending before the State Government. In the objection, the Trust had taken a categorical stand that Parishad had made allotment of the said land and lease deed had also been made in favour of Trust for school purpose. The Trust had also paid huge amount towards lease agreement to the Parishad. The Trust had also taken an objection that prior to passing the order dated 11.3.2003 no opportunity was accorded to the trust. Precise objection had also been taken in the said proceeding before the State Government that the order dated 11.03.2003 had been obtained by willful and deliberate concealment of fact without noticing the fact that the said plot had already been allotted and transferred to Trust and the construction of residential school had been completed. As such there was no occasion to accept the ground of the petitioners before the State Government that no such possession was taken. Not only possession was taken much prior by the State Government but later on the same had been transferred to the Trust in the month of December, 2000.

20. We are surprised to note that petitioners□ father Raj Narain Jain had approached to the Honble Apex Court. Initially he had obtained stay order but later on the same was dismissed and the acquisition proceeding had never been touched. Successive suit proceedings were drawn against the respondents in which initially exparte order had been obtained. Successive litigations demonstrate that on account of various interim injunctions, the actual award could not be made.

21. We find that while challenging the acquisition proceeding in Writ Petition No.407 of 2000 initially the petitioners had

taken a stand that if the period of litigation in the Hon□ble Supreme Court is excluded, more than six years are lapsed, therefore, bar of two years created through Section 11A of the Act, 1894 shall have to be adhered to. In the said proceeding, the Court had accorded interim order dated 10.01.2000 to the extent that the petitioners will participate in the award proceeding, the proceeding shall go on but no final award shall be signed or pronounced. Nowhere it had been brought into notice of the Honble Court in the said writ proceeding that after dismissal of the writ petition by Hon□ble Apex Court on 7.4.1993, Raj Narain Jain had filed suit for permanent injunction being O.S. No.892 of 1993 in which temporary injunction was accorded on 23.03.1994. Even though Misc. Appeal No.224 of 1994 had been preferred, which was allowed and the injunction was vacated. Eventually, the suit was dismissed on 8.3.2000. Even prior to it, another suit being Suit No.973 of 1999 had been preferred by the petitioners against the respondents for permanent injunction restraining them from interfering in peaceful possession, which was dismissed on 18.02.2000. The possession was taken by the State Government on 27.12.1999 and later on the same was transferred to Parishad on 28.12.1999.

22. We find that once the land had been acquired under the Adhiniyam, 1965 and the urgency clause under Section 17 (1) of the Act, 1894 was also invoked, consequently, the land stood vested in the State free from all encumbrances. It is no more res integra that under the Adhiniyam, 1965 the proceeding would not lapse. It is also reflected from the record that relying upon the order dated 11.3.2003, another Writ Petition No.60355 of 2005 was also instituted by the petitioners, even though they were fully conscious to the fact that earlier they failed to succeed before Hon□ble Apex Court or before High Court and various suits were dismissed. In the said writ petition, the Division Bench has considered the only point involved whether a beneficial proceeding that has been initiated by the Government can be revoked or withdrawn without hearing the beneficiary. In the said writ petition, the matter was relegated to the State Government vide order dated 21.7.2011. In response thereof, the order impugned had been passed.

23. It is not in dispute that in the instant matter the urgency clause under Section 17 (1) of the Act, 1894 had been invoked, possession was taken over by the State Government and later on it was transferred to Parishad on 28.12.1999. Admittedly the allotment also took place in favour of the Trust and consequently lease deed was also executed in favour of the Trust by the Parishad. The map of the Trust was also approved by the Parishad.

24. It is also reflected from the record that notice under Section 9 for taking possession had also been issued by the competent authority on 22.12.1999. While passing the order impugned, the State Government has also taken specific objection that on account of various litigation, which were thrusted upon the respondents, the award could not be made within reasonable time. However, eventually the Parishad had deposited the amount towards compensation in the office of concerned SLAO on 21.07.1999. As such the main plank of argument that the possession was not taken in accordance with law and the notice had been served upon dead person for taking possession is not acceptable under the present facts and

circumstances, as at the time of initiation of acquisition proceeding late Raj Narain Jain was alive and he had preferred initial writ before Hon□ble Apex Court, which was later on dismissed. Notice of taking possession was duly served upon the daughter-in-law of late Raj Narain Jain, who is wife of second petitioner.

25. In view of the successive proceeding, which were taken either by the petitioners or their father, it is crystal clear that the petitioners were well conversant with the acquisition proceeding. For either one reason or the other, multiple proceeding had been drawn by the petitioners but so far as possession and deposit of amount, the same cannot be denied. Admittedly, the possession was taken over in the year 1999 and only, thereafter, the Parishad, under the scheme, had not only executed the lease deed but the map was also sanctioned in favour of the Trust for running an institution, which has been established in the year 2000.

26. It is admitted by the parties that the proceedings for acquisition of land were initiated by notification under Section 28 of the Adhiniyam, 1965 on 04.04.1970. This was followed by declaration made under Section 32 of the Adhiniyam, 1965 on 28.06.1980. The award was also made. The possession of the plot was also handed over to Trust on 30.12.2000. The entire claim has been set up on the pretext that since neither the possession has been taken well within time nor compensation has been paid, therefore, the acquisition proceeding would lapse in view of Section 24 (2) of the Act, 2013. In this backdrop, it is necessary to examine the following questions:-

(i) Whether the provisions of Section 24 (2) of the Act, 2013 would apply to the acquisition made under the Adhiniyam, 1965?

(ii) Whether under the facts and circumstances, the benefit under Section 24 (2) of the Act, 2013 would be applicable?

(iii) Whether the proceeding is barred by delay and laches?

E. CONSIDERATION OF QUESTION NO.(i)

(i) **Whether the provisions of Section 24 (2) of the Act, 2013 would apply to the acquisition made under the Adhiniyam, 1965?**

27. The said issue is no longer res integra. The authoritative pronouncement in this regard has been made by the Division Bench of this Court in Atul Sharma & Ors. (Supra) and Jagbeer Singh & Ors. (Supra). The operative portion of the judgment in Atul Sharma & Ors. (Supra) is quoted as under:-

".....The aforesaid observations have been later on reproduced, considered and explained by the Apex Court in at least three decisions which deserve mention, the leading being Ch. Tika Ramji and Ors etc. vs. The State of Uttar Pradesh and Ors. (AIR 1956 Supreme Court 676), paragraphs 30 to 39. The second decision is in the case of the State of T.N. and Anr. vs. Adhiyaman Educational & Research Institute and Ors,(1995 (4) SCC 104) paragraphs 15 to 18 and the third decision is in the case of Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme vs. Stae of Tamil Nadu and Ors. (1996 Vol. 3 SCC 15) paragraphs 19, 20, 23 to 26. There are many more decisions to the same

effect and it is not necessary for us to burden this judgment with anything further.

The basic principle that can be culled out from a perusal of these judgments is that the test of repugnancy is whether the law made by Parliament and that by the State Legislature occupy the same field and whether the Parliament intended to lay down a exhaustive code in respect of the subject matter replacing the act of the State Legislature.

The non-inclusion of the 1965 Act in the 4th Schedule to the 2013 Act in terms of section 105 thereof does not necessarily mean that the 2013 Act was extended to be applied in acquisitions under the 1965 Act. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Land Acquisition Act, 1894 only. Since the 1894 Act has been repealed, and the 1965 Act continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. *This has to be viewed from another angle. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the 1965 Act also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the 1965 Act if the provisions of 2013 Act have to be applied and not otherwise in relation to the procedure of acquisition. A provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein.*

The other question is can this be construed the other way around by presuming an implied applicability of the 2013 Act merely because section 55 of the 1965 Act incorporates the procedure of acquisition under the 1894 Act. We may put on record that the issue of lapse of an acquisition proceeding under section 11-A of the 1894 Act was specifically held to be not applicable in acquisitions under the 1965 Act in Jainul Islam's case. The same situation exists here where the issue of deemed lapse under section 24(2) is sought to be introduced and read into the 1965 Act. We cannot accept this proposition inasmuch as section 55 of the 1965 Act has not been amended so as to include any provision relating to the acquisition resulting in any lapse as contained in the 2013 Act. Thus, such applicability cannot be implied when it has not been incorporated in the 1965 Act.

There is yet another reason namely the provisions of 2013 Act as contained in section 24(2) are not inconsistent with any provision of the State Act that exists from before. Conversely the State Act also does not include any provision that may said to be inconsistent or in conflict with 2013 Act. The non-inclusion of the benefit of the clause of deemed lapse does not make the enactment inconsistent, conflicting or repugnant.

To understand this recourse can be had to the provisions quoted herein above in the 2013 Act that clearly provide that the 2013 Act and its provisions are in addition and not in derogation of any law for the time being in force. Consequently the States have been left to enact any law that may provide for any better facilities relating to acquisition over and above that has been provided for in the 2013 Act. This, therefore, also removes the elements of discrimination or arbitrariness. It is open

to the State to provide better facility or benefit in matters of acquisition by bringing about any amendment in the 1965 Act.

Coming to the last limb of this argument namely the resultant discrimination in relation to acquisitions having been made prior to 01.01.2014, we may point out that when there is a legislation by incorporation then it is only that part of legislation which stands incorporated and continues to exist and not a new legislation which refers to the proceedings under the old legislation. The reason is what can be incorporated is that which exists. It is for this reason that section 55 of the 1965 Act incorporated the then existing provisions of 1894 Act. The 1894 Act has now been repealed and is not in existence. Thus, it is only the provisions of 1894 Act that have been incorporated in section 55 of the 1965 Act that will continue to exist for that purpose only to that limited extent. The same does not within its fold draw the elements of the 2013 Act which has never been intended to be incorporated or included in the 1965 Act or vice-versa. Thus, these are two sets of acquisitions under the different Acts and the question of applying Article 14 to invoke discrimination does not arise.

However, there is another shade of this discrimination which has to be avoided keeping in view the ratio of the Jainul Islam's case. To that extent we hold that if any acquisition is made by the authority under the 1965 Act after 01.01.2014 then it's actions or the assessment of compensation cannot be less than what has been contemplated in 2013 Act. The determination of the quantum of compensation, therefore, on principles will have to be applied in relation to acquisitions made by the Awas Vikas Parishad under the 1965 Act after 01.01.2014 as per the 2013 Act.

Consequently for all the reasons aforesaid the relief claimed in the writ petition with regard to the lapse of the proceedings cannot be availed of and the petition is accordingly dismissed."

(Emphasis Supplied)

28. For ready reference, the operative portion of the judgment in **Jagbeer Singh & Ors.**, (Supra) is quoted as under:-

.....The Fourth Schedule contained in the 2013 Act makes reference to 13 Acts but does not make reference to the Parishad Act.

This issue was also considered by a Division Bench of this Court in Atul Sharma. It was sought to be contended that Section 24(2) of the 2013 Act would apply to acquisitions made under the Parishad Act. This contention was repelled by the Division Bench holding that the absence of exclusion of the applicability of the 2013 Act would not necessarily mean that the 2013 Act would apply to the acquisitions made under the Parishad Act. The observations of the Division Bench are as follows:

"The non-inclusion of the 1965 Act in the 4th Schedule to the 2013 Act in terms of section 105 thereof does not necessarily mean that the 2013 Act was extended to be applied in acquisitions under the 1965 Act. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Land Acquisition Act, 1894 only.

Since the 1894 Act has been repealed, and the 1965 Act continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. This has to be viewed from another angle. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the 1965 Act also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the 1965 Act if the provisions of 2013 Act have to be applied and not otherwise in relation to the procedure of acquisition. A provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein.

(emphasis supplied)

In this connection, the Division Bench also observed that since Section 11-A of the Acquisition Act was held not to be applicable to acquisitions made under the Parishad Act, the same position would exist in regard to Section 24(2) of the 2013 Act and the observations are:

"The other question is can this be construed the other way around by presuming an implied applicability of the 2013 Act merely because section 55 of the 1965 Act incorporates the procedure of acquisition under the 1894 Act. We may put on record that the issue of lapse of an acquisition proceeding under section 11-A of the 1894 Act was specifically held to be not applicable in acquisitions under the 1965 Act in Jainul Islam's case. The same situation exists here where the issue of deemed lapse under section 24(2) is sought to be introduced and read into the 1965 Act. We cannot accept this proposition inasmuch as section 55 of the 1965 Act has not been amended so as to include any provision relating to the acquisition resulting in any lapse as contained in the 2013 Act. Thus, such applicability cannot be implied when it has not been incorporated in the 1965 Act."

(emphasis supplied)

The decisions referred to by the learned counsel for the petitioners relating to lapsing of acquisition under Section 24(2) of the 2013 Act when land was acquired under the provisions of the Acquisition Act would, therefore, not come to the aid of the petitioners.

Thus, for all the reasons stated above, it is not possible to accept the contention of the learned counsel for the petitioners that Section 24(2) of the 2013 Act would be applicable to the acquisitions made under the Parishad Act.

In the end, learned counsel for the petitioners submitted that though the award was made way back on 30 December 2013, compensation has not been paid to the petitioners who are the subsequent purchaser of the land that was acquired. It is for the petitioners to file an application before the Special Land Acquisition Officer for payment of the compensation and the Court has no reason to doubt that in case such an application is filed, it shall be decided in accordance with law after hearing the parties concerned.

The writ petition is, accordingly, dismissed with the aforesaid observations.

29. Hon'ble the Division Bench while considering the case of Atul Sharma & Ors.

(Supra) has observed that the non-inclusion of the Adhiniyam, 1965 in the Fourth Schedule to the Act, 2013 in terms of Section 105 thereof does not necessarily mean that the Act, 2013 was extended to be applied in acquisitions under the Adhiniyam, 1965. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Act, 1894 only. It was also observed that since the Act, 1894 has been repealed, and the Adhiniyam, 1965 continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the Adhiniyam, 1965 also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the Adhiniyam, 1965 if the provisions of Act, 2013 have to be applied and not otherwise in relation to the procedure of acquisition. It was opined a provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein.

30. The contention of learned counsel for the petitioners relating to lapsing of acquisition under Section 24 (2) of the Act, 2013 when the land was acquired under the provisions of the Act, 1894 would, therefore, not come to the aid of the petitioner.

31. In view of above, it is not possible to accept the contention of learned counsel for the petitioner that Section 24 (2) of the Act, 2013 would be applicable to the acquisitions made under the Adhiniyam, 1965.

F. CONSIDERATION OF QUESTION NO.(ii)

(ii) Whether under the facts and circumstances, the benefit under Section 24 (2) of the Act, 2013 would be applicable?

32. A Constitution Bench of Hon'ble Apex Court in Indore Development Authority v. Manoharlal & Ors10 has observed that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act, 2013. In the said case, the Apex Court has considered the correct interpretation of Section 24 of the Act, 2013 and finally answered as under:-

359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negatived. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013.

360. It was submitted that Section 101 provides for return of unutilized land under the Act of 2013.Section 101 provides that in case land is not utilized for five years from the

date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:

101. Return of unutilized land.-- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation.-- For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."

361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land.Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).

362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether or has to be read as nor or as and was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an

interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2)of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part ofSection 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession underSection 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2)of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for ***a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possessio****n and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders*

passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

Let the matters be placed before appropriate Bench for consideration on merits.

(Emphasis supplied)

33. In the present matter admittedly the proceeding had been challenged in different forums and initially interim injunction was also obtained but it is apparent that the acquisition had been upheld upto Supreme Court. In the circumstances, once the award has been made, it was not open for the petitioner to challenge the notification under Section 28 of the Adhiniyam, 1965. In such circumstances, so far as challenge to the acquisition and lapsing of the proceeding under the Adhiniyam, 1965 would be impermissible under law.

G. CONSIDERATION OF QUESTION NO.(iii)

(iii) Whether the proceeding is barred by delay and laches?

34. In **Urban Development Trust, Udaipur v. Bheru Lal & Ors11**., the Hon'ble Supreme Court has considered the maintainability of the writ petition against the land acquisition proceeding since the petition had been preferred challenging the land acquisition proceeding after two years of publication under Section 6 (1) of the Act, 1894 and it was held that the same would not be maintainable on the ground of delay and laches. The relevant portion of the judgment is quoted as under:-

.....It is apparent that the Notification under Section 4 was first published in the official gazette in June 1992. Thereafter substance was published in November 1992 at the conspicuous places and subsequently it was published in the local newspapers. Considering this sequence of publication, even if there is some delay, it would not mean that on this ground the land acquisition proceedings under Section 4 require to be set aside. Similar view is expressed by this Court in State of Haryana and another v. Raghubir Dayal and others [(1995) 1 SCC 133 para 7].

Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed

under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. [Re. Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and others [(1996) 4 SCC 579] and Hari Singh and others v. State of U.P. and others [(1984) 3 SCR 417].

In the result, the appeals filed by the Urban Improvement Trust are allowed. The impugned judgment and order passed by the High Court in D.B. Civil Special Appeal Nos.270-277/97 etc. allowing the appeals and quashing the land acquisition proceedings is set aside. The judgment and order passed by the learned Single Judge is restored.

Civil Appeal No.5263/2001 filed by J.K. Udaipur Udyog Ltd. is also dismissed.

There shall be no order as to costs.

35. In **State of U.P. v. Smt. Pista Devi & Ors12**., Hon'ble the Apex Court has also observed that where large tracts of land is acquired, few cannot challenge the acquisition proceeding. The operative portion of the judgment is quoted as under:-

.....It is no doubt true that in the notification issued under section 4 of the Act while exempting the application of section 5-A of the Act to the proceedings, the State Government had stated that the land in question was arable land and it had not specifically referred to sub section (1-A) of section 17 of the Act under which it could take possession of land other than waste and arable land by applying the urgency clause. The mere omission to refer expressly section 17(1-A) of the Act in the notification cannot be considered to be fatal in this case as long as the Government had the power in that sub-section to take lands other than waste and arable lands also by invoking the urgency clause. Whenever power under section 17(1) is invoked the Government automatically becomes entitled to take possession of land other than waste and arable lands by virtue of sub-section (1-A) of section 17without further declaration where the acquisition is for sanitary improvement or planned development. In the present case the acquisition is for planned development. We do not, therefore find any substance in the above contention.

It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in section 21(2) of the Delhi Development Act, 1957 which reads as follows:

"21(2). The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned

and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its develop- ment and use as the Authority or the local authority concerned may think fit to impose."

Although the said section is not in terms applicable to the pre sent acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.

Having regard to what we have stated above, we are of the view that the judgment of the High Court cannot be sustained and it is liable to be set aside. We accordingly allow these appeals, set aside the judgment of the High Court and dismiss the Writ Petitions filed by the respondents in the High Court. There is no order as to costs.

36. In **State of Rajasthan & Ors. v. D.R. Laxmi & Ors13**., it has been held that even a void proceeding need not be set at naught in all events. If parties has not approached the Court well within reasonable time, judicial review is not permissible at belated stage. For ready reference, the operative portion of the judgment is quoted as under:-

.....The order or action, if ultra vires the power, it becomes void and it does not confer any right. But the action need not necessarily set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for ; the award of the Court under Section 26 enhancing the compensation was accepted. The order of the appellate court had also become final. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in

quashing the notification under Section 4 [1] and declaration under Section 6.

It is true that the respondent had offered to accept the compensation by shifting the date of the notification by 4 to 5 years from the date of the notification under Section 4(1). For this view, reliance was placed by Shri Sachar on the judgment of this Court in Ujjain Vikas Pradhikaran v. Raj Kumar Johri & Ors. [(1992) 1 SCC 328] where this Court had allowed the shifting of the date for the determination of the compensation. In that case since the award had not been passed, this Court had given the direction but in this case award determining the compensation has attained finality. It is not a case to shift the date for the determination of the compensation. Thus considered, we are of the view that the High Court was not justified in interfering with the notification and declaration under Section 4(1) and 6.

The appeal is accordingly allowed. The judgment of the High Court stands set aside. The writ petition stands dismissed but, in the circumstances, without costs.

37. It is well settled legal proposition that scope of judicial review is limited to the decision making procedure and not against the decision of the authority. The Court may review to correct errors of law or fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order in exceptional circumstances. The power of judicial review of the writ court is limited, but it has competence to examine as to whether there was material to form such opinion as required by law or the finding recorded by the authority concerned are perverse. It is settled law that non consideration of relevant material renders an order perverse. A finding is said to be perverse when the same is not supported by evidence brought on record or they are against the law where they suffer from vice of procedural irregularities.

38. In view of the aforesaid legal proposition, it emerges that land can be acquired for public purpose, the expression "public purpose" cannot be defined by giving a special definition as the same cannot be fitted in a straight jacket formula. The facts and circumstances of each case have to be examined to find whether the acquisition is for public purpose. It is also seen that in most of the matters, delay makes the problem more and more acute and increase urgency of necessity for acquisition.

39. In **Ramniklal N. Bhutta vs. State of Maharashtra14**, it is observed in paragraph No. 10 as under:-

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial

improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

40. There cannot be any dispute to the proposition that in land acquisition proceeding tenure holders cannot be allowed to challenge the land acquisition proceeding after lapse of reasonable time. Generally the Court will not interfere with the land acquisition when the challenge is made with delay and subsequent to taking of possession and publication of award. In the present case admittedly the challenge to the acquisition proceeding was made in the earlier round of litigation before Hon□ble Supreme Court, which was eventually dismissed. As per the details brought before us through the record, the possession was taken by the Parishad on 28.12.1999 and the award was also made. Our view is strengthened by the proposition of law held by Hon'ble Apex Court in **Swaika Properties Pvt. Ltd. & Anr. v. State of Rajasthan & Ors15.**

41. A Full Bench of this Court in Gajraj & Ors. v. State of U.P. & Ors16., has observed that substantial delay in challenging the acquisition may be relevant factor while determining the relief to be granted to the petitioner.

42. In **Satendra Prasad Jain v. State of U.P. & Ors17**., Hon'ble the Apex Court has considered in detail the urgency clause under Section 17 (1) and 17 (3-A) of the Act, 1894 and held that ordinarily government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been

made under Section 11. Upon considering the urgency clause, it has been held that upon taking of possession, the land vests in the State Government that is to say, the owner of the land loses to the Government the title to it. It is held that once land vested in the State, the same is free from all encumbrances, it cannot be divested or revested to the tenure holders. For ready reference, the relevant portion of the judgment is quoted as under:-

.....Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it underSection 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.

In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the Ist respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.

There is no merit whatsoever in the submission that compensation can be awarded to the appellants under Section 5. Section 5 postulates payment of compensation for damage done to land during the course of surveying it and doing all other acts necessary to ascertain whether it is capable of being adapted for a

public purpose. Section 5 has no applicable to the instance case.

In the result, the appeal is allowed. The judgment and order under appeal is set aside. The Rule is made absolute and the first and second respondents are directed by a writ of mandamus to make and publish an award in respect of the said land within twelve weeks from today.

20. The third respondent shall pay to the appellants the costs of the appeal quantified in the sum of Rs. 10,000.

43. Hon□ble the Apex Court **in Aflatoon & Ors. v. Lt. Governor of Delhi & Ors18**. had considered in detail planned development of Delhi under the Act before the Master Plan was ready and also considered the delay and laches. In the said case, it has been observed as under:-

□.....The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust v. Smt. Lakshmi Devi and Others(1). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area it is only necessary to obtain the sanction or approval of the local authority as provided in S. 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land under s. 15 was delegated by the Central Government to the Chief Commissioner of Delhi. ***We have already held that the appellants and the writ petitioners cannot be allowed to challenge the validity of the notification under s. 4 on the ground of laches and acquiescence.*** *The plea that the Chief Commissioner of Delhi had no authority to initiate the proceeding for acquisition by issuing the notification under s. 4 of the Act as s. 15 of the Delhi Development Act gives that-power only to the Central Government relates primarily to the validity of the notification. Even assuming that the Chief Commissioner of Delhi was not authorized by the Central Government to issue the notification under s. 4 of the Land Acquisition Act, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must, in any event, be negatived and we do so.*

It was contended by Dr. Singhvi that the acquisition was really for the cooperative housing societies which are companies within the definition of the word company' in s. 3(e) of the Act, and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned Single Judge and the Division Bench of the High Court were of the view that the acquisition was not for company.

We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over, or, in fact, handed over, a portion of the property acquired for development to the cooperative housing societies would not make the acquisition one for company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the cooperative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was cooperatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to cooperative societies for development, it would not follow that the acquisition was for cooperative societies, and therefore, Part VII of the Act was attracted. It may be noted that the validity of the notification under s. 4 and the declaration under s. 6 was in issue in Udai Ram Sharma and Others v. Union of India(1) and this Court upheld their validity.

We see no merit in the appeals and the writ petitions. They are, therefore, dismissed with costs.

Petitions dismissed.

44. Hon□ble the Apex Court has also considered the similar view in Kendriya Karamchari Evam Mitra Sahkari Avas Samiti Ltd. and Anr. v. State of U.P. and Anr19.

45. Hon'ble the Apex Court in **V. Chandrasekaran & Anr. v. The Administrative Officer & Ors20.,** has observed that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. The land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. It has been observed in paragraph 16, 17, 18, 21 and 22 as under:-

"16. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. (Vide: Avadh Behari Yadav v. State of Bihar and. Ors. MANU/SC/002/1996: (1995) 6 SCC 31; U.P. Jal Nigam v. Kalra Properties (P) Ltd. (Supra); Allahabad Development Authority v. Nasiruzzaman and Ors. MANU/SC/1269/1996: (1996) 6 SCC 424, M. Ramalinga Thevar v. State of Tamil Nadu and Ors. MANU/SC/0291/2000: (2000) 4 SCC 322; and Government of Andhra Pradesh v. Syed Akbar and Ors. MANU/SC/0987/2004: AIR 2005 SC 492).

17. The said land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or Under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide: State of Madhya Pradesh v. V.P. Sharma MANU/SC/0200/1966: AIR 1966 SC 1593; Lt. Governor of Himachal Pradesh and Anr. v. Shri Avinash Sharma

MANU/SC/0417/1970: AIR 1970 SC 1576; Satendra Prasad Jain v. State of U.P. and Ors. MANU/SC/0392/1993 AIR 1993 SC 2517; Rajasthan Housing Board and Ors. v. Shri Kishan and Ors. MANU/SC/0466/1993: (1993) 2 SCC 84 and Dedicated Freight Corridor Corporation of India v. Subodh Singh and Ors. MANU/SC/0268/2011: (2011) 11 SCC 100).

18. The meaning of the word 'vesting', has been considered by this Court time and again. In Fruit and Vegetable Merchants Union v. The Delhi Improvement Trust MANU/SC/0082/1956: AIR 1957 SC 344, this Court held that the meaning of word 'vesting' varies as per the context of the Statute, under which the property vests. So far as the vesting Under Sections 16 and 17 of the Act is concerned, the Court held as under.-

In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or; limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.

21. In Government of Andhra Pradesh and Anr. v. Syed Akbar (Supra), this Court considered this very issue and held that, once the land has vested in the State, it can neither be divested, by virtue of Section 48 of the Act, nor can it be reconveyed to the persons-interested/tenure holders, and that therefore, the question of restitution of possession to the tenure holder, does not arise. (See also: Pratap v. State of Rajasthan MANU/SC/1101/1996: AIR 1996 SC 1296; Chandragaudaj Ramgonda Patil v. State of Maharashtra MANU/SC/1264/1996: (1996) 6 SCC 405; State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr. MANU/SC/0731/1997: AIR 1997 SC 2703; Printers (Mysore). Ltd. v. M.A. Rasheed and Ors. MANU/SC/0307/2004: (2004) 4 SCC 460; Bangalore Development Authority v. R. Hanumaiah MANU/SC/0988/2005: (2005) 12 SCC 508; and Delhi Airtech Services (P) Ltd. and Anr. v. State of U.P. and Anr. MANU/SC/0956/2011: (2011) 9 SCC 354).

22.In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non-grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person-interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

H. CONCLUSION

46. Considering the facts and circumstances of the case, we find that against the acquisition the petitioners' father had already approached to the Supreme Court but the same had been negated by the Supreme Court and the acquisition was upheld. The petitioners' father as well as the petitioners had also knocked the doors of various authorities/ courts but eventually they failed to get any relief from anywhere. The possession of the land had been taken by the authorities and the same had been transferred to the Trust.

On the said land institution had also been built, which is also imparting education to students. We find that once the land vested in the State, the same is free from all encumbrances, it cannot be divested or revested.

47. We are also of the considered opinion that at this belated stage we cannot permit the petitioner to revive the dead and stale claims. The stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In view of the law laid down by this Court in Atul Sharma & Ors. (Supra) and Jagbeer Singh & Ors. (Supra) Section 24 of the Act, 2013 would not be attracted in the present matter. Even otherwise as per the parameters of the Constitution Bench mandate in Indore Development Authority (Supra) as averred in detail, the claim of the petitioner does not fall under Section 24 of the Act, 2013.

48. In the facts and circumstances, so far as the determination of quantum of compensation is concerned, the same would be governed as per the principles applied in relation to acquisition made by Parishad under the Adhiniyam, 1965. However, it is always open to the petitioner to move appropriate application to get the compensation in accordance with law.

49. Consequently, for all the reasons aforesaid, the reliefs claimed in the writ petition with regard to lapse of acquisition proceeding cannot be accorded to the petitioner.

50. The writ petition stands **dismissed** accordingly.

(2025) 9 ILRA 1091
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ - C No. 3000112 of 2002

Smt. Sushila Devi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Vimal Kishore Verma, A.K. Verma, Mohammad Aslam Khan, Sayeed Ahmad Jamal

Counsel for the Respondents:
C.S.C.

Issue for Consideration
Whether the judgment and order passed by the appellate authority does not fulfills the requirements of provisions of sub section (1) of Section 38 of the Act read with order 41 Rule 31 CPC?

Head Notes
The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960- Sections 4(A), 5(3)(a), 10(2) & 38(1); The Code of Civil Procedure-1908- Order XLI Rule 31- Appellate Authority to required to apply its mind to the facts of the case, state the questions involved in the case and decide the same giving its own reason for the decision - The appellate authority failed to discharge its duty and has dismissed the judgment and order dated 29.04.2002 and 01.10.2002 by recording its general expression of inference with the Prescribed Authority written and quoting any reason at would amount from the judgment of the appellate authority- Prescribed authority is directed to decide the objection filed by the petitioner in accordance with law and in the mean time, the prescribed authority shall not lease out the surplus land to any person- Petition allowed.

Held- Judgment and order passed by the appellate authority does not fulfills the requirements of provisions of sub section (1) of Section 38 of the Act read with order 41 Rule 31 CPC and same, therefore, liable to be set aside. (E-15)

(Para 36 to 40)

Case Law Cited

Vithaldas Jagannath Khatri (Dead) through Shakuntala alias Sushmi & others Vs. State of Maharashtra Revenue and Forest Department & others [2020 (16) Supreme Court Cases 1]; Damodar Singh and others Vs. State of U.P. and others [2001(Suppl.) R.D. 396]; Janki Prasad Vs. Sanjay Kumar [AIR 2022 (NOC) 254 (ALL.)]; Benny D'Souza Vs. Melwin D'Souza [AIRONLINE 2023 SC 1320]

List of Acts

The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960; The Constitution of India-1950; The Code of Civil Procedure-1908

List of Keywords

Appeal dismissed; Recording general expression; without quoting reason; Order XLI Rule 31

Case Arising From

Orders dated 29.4.2002 and 24.2.2000, declaring her land as surplus. It is submitted that the authorities wrongly classified her land as irrigated, ignoring an earlier report dated 5.4.1976 that classified it as unirrigated. The Additional Commissioner's order dated 29.4.2002 was ex-parte, without giving the petitioner a hearing opportunity. The petitioner filed a writ petition No.50 (M/S) (Ceiling) of 2002, which was disposed of on 29.8.2002, directing the Additional Commissioner to consider her restoration application. The Additional Commissioner rejected the restoration application on 1.10.2002, which the petitioner claims was done illegally and arbitrarily.

Appearances for Parties

Counsel for Petitioners(s) : Vimal Kishore Verma, A.K. Verma, Mohammad Aslam Khan, Sayeed Ahmad Jamal

Counsel for Respondent(s) : C.S.C

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Vimal Kishore Verma, Advocate and Sri Syed Ahmad Jamal, learned counsel for the petitioner and learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs :-

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 1.10.2002 and impugned judgment and order dated 29.4.2002, passed by opposite party No.2 in Appeal No.33/1999-2000 Under Section- 13 of the Ceiling Act, contained at Annexure No.14 and 10 to the writ petition and impugned order dated 24.2.2000, passed by opposite party No.3, Prescribed Authority, Sitapur in Case No.3/2/3 Under Section- 10 (2) of the Ceiling Act, contained at Annexure No.8 to the writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties and directing them to not interfere in the peaceful possession of the petitioner over the disputed land and excluded the disputed land from the Ceiling Act, in the interest of justice.

(iii)...

iv)..."

3. Brief facts of the case are that the disputed land was recorded in the name of Pirtha Singh, father in law of the petitioner, thereafter a notice under Section

10(2) of the Ceiling Imposition of Ceiling and Land Holdings Act was issued and served to Pirtha Singh, recorded tenure holder on 10.12.1975. Subsequently Pirtha Singh filed an objection on 24.12.1975 against the aforesaid notice under Section 10(2) of the Ceiling Act before the prescribed authority. He claimed much of the land was unirrigated, and Gata Nos. 139 and 211 were wrongly shown as irrigated. He also stated that some land had been transferred through registered sale deeds before the cut-off date 8.6.1973.

4. An Advocate Commissioner submitted his commission report stating that the land was unirrigated. The prescribed authority vide order dated 18.6.1976, declared 11.70 acres of irrigated land as surplus without considering the legal point that Ram Singh was alive on 8.6.1973, hence the family was entitled to an additional 2 hectares under Section 5(3)(a), it is the submission of learned counsel for the petitioner.

5. The petitioner has filed multiple appeals and applications, including Writ Petition No. 50(M/S) (Ceiling) of 2002 before this Court against the impugned orders dated 29.4.2002 and 24.2.2000, passed by opposite parties Nos.2 and 3 which was disposed of finally on 29.8.2002 with the direction to the Additional Commissioner, Lucknow Division, Lucknow to consider and dispose of the petitioner's restoration application as expeditiously as possible within 6 weeks from the date of production of the certified copy of the order. She seeks to set aside the impugned orders and have her case reconsidered.

6. The petitioner challenges orders dated 29.4.2002 and 24.2.2000, declaring her land as surplus. It is submitted that the authorities wrongly classified her land as irrigated, ignoring an earlier report dated 5.4.1976 that classified it as unirrigated. The Additional Commissioner's order dated 29.4.2002 was ex-parte, without giving the petitioner a hearing opportunity. The petitioner filed a writ petition No.50 (M/S) (Ceiling) of 2002, which was disposed of on 29.8.2002, directing the Additional Commissioner to consider her restoration application. The Additional Commissioner rejected the restoration application on 1.10.2002, which the petitioner claims was done illegally and arbitrarily. The petitioner seeks to set aside the impugned orders and requests the Court to direct the parties to maintain the status quo over the disputed land.

7. Submission of learned counsel for the petitioner is that the disputed land was the ancestral property and recorded in Jiman-1, as such, the petitioner was having 1/2 share in the disputed land, and the land declared as a surplus of her share is totally illegal. It is also stated that in the notice Gata No.139 and 211 wrongly mentioned as irrigated land and in fact, the aforesaid land was unirrigated.

8. Learned counsel for the petitioner submitted that after lapse of long period the situation of the spot has been changed and facility of irrigation is available to the 80% agricultural land at present time, hence on the basis of the aforesaid inspection report regarding irrigated and non-irrigated land no decision can be taken, hence the opposite party No.3 passed the impugned order on 24.2.2000 on the basis of the aforesaid inspection report dated 7.12.99 and treated the whole land of the petitioner irrigated according to the present position.

9. Learned counsel for the petitioner further submitted that based on the Advocate Commissioner's spot inspection and report dated 5.4.1976 (Annexure No. 2 to the writ petition), plots gata Nos. 139 and 211 were found to be unirrigated. The report further states that no tube well or Nahar exists near these plots and that irrigation was solely dependent on a Talab (pond), which qualifies the plots as unirrigated under Section 4(A) of the U.P. Imposition of Ceiling on Land Holdings Act. Despite this, the prescribed authority, in its judgment dated 18.6.1976, held that these plots were irrigated, citing the existence of a tube well in adjoining gata No. 212. However, no documentary evidence supports the claim that plots 139 and 211 are irrigated, and no tube well exists directly on them. The prescribed authority also ignored the Commissioner's report of 5.4.1976, leading to an erroneous and illegal finding that plot Nos.139 and 211 are irrigated.

10. It is also relevant to mention here that after remand, Additional Collector/prescribed authority, Sitapur himself made the spot inspection and submitted the report on 7.12.1999, in which it is specifically stated that area 0.332 Hectare of gata No. 292 is not the agricultural land due to jungle and brick kiln, but the prescribed authority has not excluded the aforesaid land from the ceiling in illegal and arbitrary manner.

11. It is also relevant to mention here that after remand of the case, opposite party No.3, prescribed authority (Ceiling)/ Adddtional Collector, Sitapur himself made the spot inspection and submitted the inspection report dated 7.12.1999 on the basis of the present position, by which illegally treated the whole land as irrigated. It is also relevant to mention here that according to Section- 4(A) of the U.P. Imposition of Ceiling and Land Holding Act, the determination regarding the irrigated and non irrigated land should be made from the date of issuance of the notice under Section 10(2) of the U.P. Imposition of Ceiling and Land Holding Act, and on the basis of the relevant Khasra 1378, 1379 and 1380 fasli, but not on the basis of the present position.

12. It is also stated that prescribed authority has passed the impugned order dated 24.2.2000 without considering the legal point that at the time of enforcement of the Ceiling Act dated 8.6.1973, the petitioner's husband Ram Singh was alive, as such, the petitioner namely Sushila Devi being his widow is entitled for the benefit of two Hectare additional irrigated land according to Section 5(3) (a) of the U.P. Imposition of Ceiling and Land Holding Act, which has been considered by the prescribed Authority at the time of passing the earlier judgment and order dated 28.2.1979 and given the benefit of two Hectare additional irrigated land to the petitioner, but after remand in the subsequent order dated 24.2.2000, the prescribed authority has not considered the aforesaid legal point and not given the benefit of two hectare additional irrigated land to the petitioner illegally and no finding given regarding the additional issue.

13. He further submitted that the appellate court without complying the requirement of provisions of (1) of Section 38 CPC has decided the appeal, which is not justifiable in law. He submitted that no finding has been returned on the order of prescribed authority and without considering the relevant facts and

circumstances of the case, the appellate court has proceeded to decide the appeal ex-parte.

14. He further submitted that the application for restoration of the order was submitted before the appellate court and when no order was passed, Writ Petition No.50/2002; Smt. Sushila Devi Vs. State of U.P. and others was filed before this Court, wherein direction was issued by disposing of the writ petition to the Additional Commissioner, Lucknow Division, Lucknow to consider and dispose of the application of the petitioner as expeditiously as possible preferably within six months from the date of production of certified copy of the order and till disposal of the application the order dated 07.06.2002 shall continue.Thereafter, on the application for restoration an order was passed by the appellate court on 01.10.2002, whereby the application was rejected on the ground that there is no merit in the application.

15. His next submission is that the application was not considered properly and without assigning reasons the application was rejected. In support of his submission, learned counsel for the petitioner has relied upon the following judgments, which are as under :-

(i) Vithaldas Jagannath Khatri (Dead) through Shakuntala alias Sushmi & others Vs. State of Maharashtra Revenue and Forest Department & others [2020 (16) Supreme Court Cases 1]. Paragraph-18 onwards are being quoted below :-

"18. It will thus be seen that under Section 11 of the 1961 Act, where any land held by a family is partitioned after the cut-off date of 26.09.1970, the partition so made shall be deemed, unless the contrary is proved, to have been made in anticipation of, or in order to avoid or defeat, the Amending Act 1972 and shall accordingly be ignored. There is nodoubt that on the facts of this case that the partition deed, as well as its registration, is prior to the cut-off date.

19. On 19.11.1976, 60 acres and 27 gunthas of land of Vithaldas was declared surplus. An appeal preferred against this order was dismissed by the Maharashtra Revenue Tribunal on 16.02.1977. On 02.03.1982, a learned Single Judge of the Nagpur Bench of the Bombay High Court remitted the matter to the Surplus Land Determination Tribunal for fresh enquiry. On remand, a fresh order was passed by the Sub-Divisional Officer on 07.05.1984, where land admeasuring 59 acres 35 gunthas was deemed to be surplus. An appeal was filed against the aforesaid order by Vithaldas, his wife, his son and the third daughter Bela Devi under Section 33 of the 1961 Act. The two other minor daughters did not file any appeal, as they were satisfied with the view adopted by the Sub-Divisional Officer, by which no part of the property that devolved on them by means of the partition deed was declared surplus. The State filed cross-objections in the appeal filed by Vithaldas, challenging the exclusion of the land, inter alia, of the two elder daughters. However, the State did not take care to implead them. The appeal filed by Vithaldas et. al. was dismissed by the Appellate Authority, who allowed the cross objections of the State by its order dated 03.12.1984. The appellate authority found that the partition deed dated 31.01.1970, though before the cut-off date, was against the principles of Hindu Law, to the extent that it gave a share to

minor daughters in ancestral land. On this basis, the partition deed was declared to be of no effect in law.

20. The aforesaid appellate order was challenged by Vithaldas and his wife in writ proceedings before the Bombay High Court. The learned Single Judge dismissed the writ petition in September, 1987. An intra- court appeal was preferred which was then dismissed by the impugned order dated 27.11.2007. A Special Leave Petition was filed by Vithaldas through his legal representatives who are the two elder daughters, as his legal heirs, as by now Vithaldas had expired. During the course of the initial hearing, this Court, by its order dated 23.11.2016, passed an order stating that it wished to see revenue entries in terms of Section 148 and 149 of the Maharashtra Land Revenue Code, 1966, post- execution of the partition deed. An additional affidavit was filed by the son of the late Vithaldas, stating that records from 1970-75 are in a mutilated condition, but that from the records made available, the two elder daughters were shown as occupants from 1972 to 1976 for survey nos. 12 and 14, through their guardian, i.e. their grandfather.

21. When the matter was argued before a Division Bench of this Court, Justice Sanjay Kishan Kaul, after stating these facts, held that a limited fiction has been created by Section 11of the 1961 Act, as a result of which, if a partition deed is prior to the cut-off date, it cannot be ignored under Section 11. The learned Judge also held that the State□s cross- objections being allowed in the absence of the two elder daughters was fatal, as they were both necessary parties to the proceedings. The learned Judge then went into the unmarried daughters□ claims in HUF property and held:

35. The legal view, thus, is very clear:

35.1.. A provision for marriage of unmarried daughters can be made out of ancestral property.

35.2. Such provision can be made before, at the time, or even after the marriage.

35.3. The provision is being made out of pious obligation, though the right of women got diluted over a period of time. However, with the amendment to the Hindy Succession Act, in 2005, a specific right is now conferred on women to get a share on partition of ancestral property, including the right to claim partition. As mentioned above this change was brought about in Maharashtra in 1994, itself.

22. The learned Judge went on to further observe that a provision for an unmarried daughter in a partition deed may partake the nature of a gift, and then concluded:

41. In the end, it may be noted that the only aspect on which the debate occurred was the share of the two elder daughters, and the right to retain the land as their separate land, without it being adjusted with the lands of late Vithaldas. The findings above, thus, lead to the conclusion that the view taken by the SDO vide order dated 7.5.1984, regarding the land of the two elder daughters, is the correct view, and the subsequent view by the appellate authority faulted on more than one reason, as mentioned aforesaid. The further imprimatur of that view by the learned Single Judge and the Division Bench of the High Court, thus, also cannot be sustained.

42. The impugned orders of the appellate authority, the learned single Judge and the Division Bench are, thus, liable to be set aside and the view taken by the SDO, restored, qua the lands located in Survey Nos. 12 & 14 of Babhulgaon, giving rights to the two elder daughters, who are the appellants in the present proceedings.

23. K.M. Joseph, J. differed with Justice Kaul. According to the learned Judge, the questions that would arise for consideration by the Court are as follows:

102. The following questions would arise for consideration by the Court:-

102.1. (i)Whether the authorities under the Act have the power to find that the partition entered into before26.9.1970, was sham or collusive and thereby ignore the same?

102.2. (ii) Notwithstanding the registered partition dated 31.01.1970, whether the property allotted to the elder daughters of Shri Vithaldas is liable to be included in the account of the family unit?

102.3. (iii)What is the effect of the cross-objections of the State being allowed in the absence of elder daughters, in the appeal before the Tribunal?

24. After setting out the provisions of the Act, the learned Judge concluded as follows:

119. Thus, it can be concluded as follows:

119.1. A transfer or a partition entered into before 26.09.1970, if it is not genuine and is collusive or is a sham transaction, can, in a given case, on materials being present, be found to be so by the Authority under the Act;

119.2What is contemplated under Sections 10and 11 of the Act read with Section 8, undoubtedly, is a transfer as defined in Section 8, being a genuine transaction. A fraudulent transaction or a sham transaction if entered into before 26.09.1970, would incur the wrath of Section (3), and a farce of a partition likewise, bringing about a mock division of property among the sharers, would also incur wrath of Section (3) of the Act. No doubt, even if the transaction is a sham transaction, be it a transfer or a partition, needless to say, it would incur the wrath of Sections 10 and 11and it would not be necessary to justify the invalidity with any materials if entered into or effected after 26.09.1970.

119.3. It does not mean that a transaction which is entered into, particularly after the Act came into force, be it a transfer or a partition, and if there are materials and circumstances brought out, which persuades Authorities to hold that it is collusive or a sham transaction and the property did not change the hands, the property would not be liable to be treated as held by the previous owner as on the commencement day and included in the account despite the purported transfer or partition.

25. Having concluded thus, the learned Judge then went on to declare that the partition deed, being unnatural, was sham; that coparcenary property alone is partible, and stated that the question as to whether or not a gift could have been validly made by Vithaldas to his elder daughters cannot be gone into, as no such

case had been set up. Finally, the learned Judge held that it was of no moment that cross- objections of the state were allowed without making the two elder daughters parties to the appeal before the appellate tribunal, and then concluded that the appeal should stand dismissed.

26. Shri Krishnan Venugopal, learned Senior Advocate appearing on behalf of the Appellants largely relied upon the judgment delivered by Justice Sanjay Kishan Kaul and in particular, strongly relied upon Gurdit Singh v. State of Punjab 1974 (2) SCC 260 and Uttar Chand v. State of Maharashtra (1980) 2 SCC 292. On the other hand, Shri Rahul Chitnis, appearing for the State, largely read from Justice Josephs judgment and supported it.

27. On a conspectus of the provisions of the 1961 Act that have been set out hereinabove, what becomes clear is that transfers or partitions of land made in anticipation of or in order to avoid or defeat the 1972 Amending Act were to be ignored in calculating ceiling limits. This was so laid down by the Amending Act, 1975, which made 26.09.1970 the cut-off date after which such transfers became suspect. What is important to note is that the 1961 Act does not in any manner declare such transfers to be void. However, if the contrary is proved on the facts of a given case, i.e. that a bonafide transfer or partition was in fact effected after the cut-off date, the person affected would be out of the clutches of Section 10 and/or Section 11 of the 1961 Act. In fact, what is important is the expression shall accordingly be ignored, which occurs in Section 11.

28. The scheme of the 1961 Act is that a person or a family unit has to submit returns by certain dates and extended dates that are mentioned in Sections 12 and 12-A of the 1961 Act. Section 13 is important in that where a person or member of a family unit either fails without reasonable cause to furnish a return, or furnishes a false return, he becomes liable to a penalty, which may extend to INR 100 or 500, as the case may be. A false return may be ignored by the Collector, requiring the person or family unit to submit a true and correct return complete in all particulars under Section 13(2), together with the penalty of INR 500. If thereafter, any such person or family unit fails to comply with the order within the time so granted, then, as a penalty for failure to furnish such return or a true and correct return complete in all particulars, the right, title and interest in the land held by him or the family unit as the case may be, in excess of the ceiling area, shall, subject to the provisions of Chapter 4, be forfeited to the State Government and vest in that Government. This Section gives a limited jurisdiction to the Collector to determine whether a true and correct return complete in all particulars has been given. Thus, a Collector would be well within his jurisdiction to state that a registered partition deed entered into after 26.09.1970 has been suppressed in the return furnished, as a result of which a penalty of INR 500 may be imposed, or excess land forfeited under Section 13(3). This jurisdiction is limited only to the factum of a partition deed having been suppressed from the return, and does not extend to conduct an enquiry as to whether a partition deed prior to 26.09.1970 is or is not a sham document. Also, the discretion vested in the Collector under Section 30 is at a stage anterior to the holding of an enquiry under Section 14, and the resultant declaration under Section 21.

29. By Section 14 of the 1961 Act, the Collector is then to hold an enquiry either suo motu or otherwise, whether or not a return has been filed, in respect of every person or a family unit holding land in excess of the ceiling area. In so doing, Section 18 states that the Collector must consider several matters including, under sub-clause (b), whether any land transferred between 26.09.1970 and the commencement date (which we have seen is 02.10.1975), or any land partitioned after the cut-off date should either be considered or ignored in calculating the ceiling area as provided in Sections 10 and 11 of the 1961 Act. If Section 18(a) to (k) are seen, the evidence adduced at the hearing to be given to the holder and other persons interested in the land, only goes to calculating the total area of the land, including land held by the holder between 26.09.1970 and 02.10.1975 and lands that have been acquired after 02.10.1975. All the details mentioned in Section 18 only speak of ignoring certain transfers or partitions between the cut-off date and the commencement date, and otherwise would only go to the calculation of lands held by persons, and then applying the drill of the ceiling provisions of the 1961 Act. To state that Section 18(l) is a catch- all provision by which the Collector can determine whether a particular transfer or partition is a sham transaction, even if entered into before the cut-off date, is to go beyond the jurisdiction conferred on the Collector by the 1961 Act. In point of fact, even the language of Section 18(l) makes it clear that "any other matter" is circumscribed by the following words: "for the purpose of calculating the ceiling area, and delimiting any surplus land.

30. This becomes even clearer when the other provisions of the 1961 Act are looked at. Under Section 21, the Collector has to make a declaration as to entitlement of a person or family unit to hold within the ceiling area and area of land which is in excess of the ceiling area. Further, what is of importance is that Section 44B excludes pleaders from appearing on behalf of any party in any of the proceedings under the 1961 Act. This is for the reason that the Collector has to determine on the facts of each case, based on returns filed if any, as to what areas are to be excluded, and what areas of land are to be included so far as determination of ceiling of a person or family unit is concerned. If it were to be held that the Collector could go into a trial as to whether a particular partition deed is or is not sham, even though it is before the cut-off date, would have two effects that are not warranted in law - first, it would extend the legal fiction that is limited to transfers and partitions made after the cut-off date; and second, if a period even before the cut-off date can be considered, it would render the cut-off date otiose, as then in all cases the Collector could go into whether a particular transfer or partition has been entered into to avoid the effect of the 1972 Amendment Act, which is an enquiry restricted only to transfers and partitions which take place on or after 26.09.1970 upto the commencement date. Also, if the Collector were to substitute himself as a Civil Court deciding a Civil Suit, it would be absolutely essential for a person or family unit to engage a pleader of his choice to argue all the ramifications that his case may have, both in fact and in law. In fact, a Civil Court alone would have the jurisdiction to decide a question as to whether a partition deed entered into before the cut-off date is or is not sham, which would involve a declaration that the partition be declared void. The 1961 Act

therefore bars the jurisdiction of the Civil Court only insofar as transfers and partitions are entered into on or after 26.09.1970 and before the commencement date, and not to transfers and partitions that take place before the cut-off date.

31. As a matter of fact, if the appeal provision, i.e. Section 33 of 1961 Act is to be seen, it is clear that appeals are provided to the Maharashtra Revenue Tribunal against a declaration or part thereof made under Section 21 of the 1961 Act. The persons who would be aggrieved by such declarations can only be the person or family unit whose ceiling area is determined or the landlord to whom possession of land is to be restored or the right, title and interest of the person or family unit whose land is to be forfeited to the State Government. If at all a cross-objection can be taken by a respondent under Section 33(1A), it can only be a person or family unit or landlord spoken of in Section 21(1) of the 1961 Act. The State Government may perhaps file a cross-objection where it contends that land has wrongly not been forfeited to it. But such is not the case on the facts of this appeal. Thus, the State taking a cross objection on the facts of this case would itself be outside Section 33(1A). If at all the State can be said to be aggrieved by a declaration made under Section 21, a suo moto power of revision is given to the State Government under Section 45, which on the facts of a particular case may well be exercised.

32. This apart, once it is clear that the elder daughters are affected by virtue of the partition deed being held to be non est in law by the appellate tribunal, they ought to have been made parties to the appeal so that they could have made arguments in favour of the legal validity of the partition deed. This opportunity being denied to them, as has been rightly held by Justice Kaul, is also fatal to the appellate authority□s order, which has therefore wrongly been upheld by the learned Single Judge and Division Bench of the Bombay High Court.

33. At this stage, it is important to consider some of the judgments of this Court under the 1961 Act.□In Raghunath Laxman Wani and Ors. Vs. State of Maharashtra (1971) 3 SCC 391, a Special Leave Petition was entertained directly against the judgment and order passed by the Maharashtra Revenue Tribunal dated 02.09.1966, in proceedings held by the Deputy Collector under Section 14 of the 1961 Act in respect of lands held by the appellants therein. The Deputy Collector and the Tribunal concurrently found on fact that the appellants□ case of severance of status and partition of the family lands - partially in 1956, and then in 1960, was not acceptable. In the absence of any document regarding alleged severance of the family and partition, other factors when toted up rendered the appellants□ case of partition, first in 1956 and then in 1960, □doubtful□. Given these circumstances, this Court held that it □would be more than reluctant to interfere and upset such a finding□ (see paragraph 14). The Court then examined the scheme of the 1961 Act in paragraphs 15 to 17, and held that the ceiling area is to be ascertained with reference to the state of affairs existing only on the □appointed date□. In this view, the Revenue Tribunal was held to be correct in not taking into consideration three children born in the family after the appointed date while determining the ceiling area to which the appellants family was entitled. This case turned largely on its facts, and was in any case decided before the introduction of

Section 44-B to the 1961 Act in 1976 - which forbade pleaders from arguing cases before the authorities under the 1961 Act.

34. In Jugal Kishore v. State of Maharashtra (1989) Supp. (1) SCC 589, the question before this Court was whether in view of Section 100(2) of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958 (hereinafter referred to as the Bombay Tenancy Act), the Tenancy Tehsildar had exclusive jurisdiction to decide the issue of tenancy. In holding that the authorities under the 1961 Act would have to determine the land holdings of the petitioner therein, this Court held:

8. It is, therefore, submitted on behalf of the petitioner that determination of the question of tenancy by the Ceiling Authorities, was without jurisdiction. The High Court held that in the facts of this case it was not. The Ceiling Authority had to determine the land holdings of the petitioner. Incidentally, where a transfer is made by the landholder creating a tenancy, there whether the transfer was made bona fide or made in anticipation to defeat the provisions of the Ceiling Act, is a question which falls for determination squarely by the Ceiling Authorities, to give effect to or implement the Ceiling Act. In that adjudication it was an issue to decide whether tenancy right was acquired by the tenant of the petitioner. But here before the Ceiling Authorities the adjudication was whether the transfer to the tenant, assuming that such transfer was there, was bona fide or made in anticipation to defeat the provisions of the Ceiling Act. This latter question can only be gone into in appropriate proceedings by the Ceiling Authorities. Unless the Acts, with the intention of implementing various socio-economic plans, are read in such complementary manner, the operation of the different Acts in the same field would create contradiction and would become impossible. It is, therefore, necessary to take a constructive attitude in interpreting provisions of these types and determine the main aim of the particular Act in question for adjudication before the court.

9. In our opinion, having regard to the Preamble to the Act of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, which was enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of our Constitution; and in particular, but without prejudice to the generality of the foregoing declaration, to ensure that the ownership and control of the agricultural resources of the community are so distributed as best to subserve the common good and having regard to the purpose of the Bombay Act, it was open to the Ceiling Authorities to determine whether there was, in fact, a genuine tenancy.

35. In Jugal Kishore case, case, no question similar to the question that is before us in the present matter arose on the facts. It was assumed that adjudication before the ceiling authority would include an adjudication as to whether a person was made a tenant to defeat the provisions of the 1961 Act. Based on that assumption, the question posed and answered by the Court was that it would be the ceiling authorities - and not the Bombay Tenancy Act authorities - who would be competent to answer such question. This judgment also does not, in any manner, decide the questions that have been posed before this Court, with particular reference to the language of Section 11 of the 1961 Act and

partitions which took place prior to a cut-off date where even a limited deeming fiction did not become applicable.

36. In State of Maharashtra and Anr. v. Rattanlal (1993) 3 SCC 326, this Court was concerned with the operation and reach of Section 45 of the 1961 Act, which dealt with the revisional power of the State Government. On the facts of Rattanlal (supra), the Additional Commissioner had issued a show cause notice to the respondents therein, inter alia, for the reason that the respondent did not disclose the lands or his half share in a particular declaration, having suppressed the same. On hearing the respondent, and for reasons recorded in his order dated 09.06.1980, he remitted the case to the primary Tribunal to redetermine surplus land. The High Court held that once an appeal was preferred by the declarant under the 1961 Act, and an order made thereon, the Commissioner or State Government is devoid of jurisdiction to determine the ceiling area. The Supreme Court set aside the judgment of the High Court, and held that it was perfectly within the jurisdiction of the Additional Commissioner under Section 45 of the 1961 Act, suo moto, to call for the records of a case and thereafter to decide it and pass such order thereon as it deems fit under Section 45(2) of the 1961 Act. This case again is far removed from the facts of the present case, concerning itself with the suo moto powers exercisable under Section 45 of the 1961 Act.

37. In Bhupendra Singh v. State of Maharashtra (1996) 1 SCC 277, this Court, while dealing with proceedings under the 1961 Act, held:

13. Section 18 of the Ceiling Act requires the ceiling authority to consider certain matters enumerated therein before issuing a declaration under Section 21 declaring the land which the person or the family unit is entitled to hold and the surplus lands. Clause

(d) of Section 18 requires the Collector to consider, inter alia, whether any transfer is made by the holder in contravention of Section 8, and if so, whether the land so transferred should be considered or ignored in calculating the ceiling area under Section 10(1). Clause (g) requires the authority to consider what is the total area of land held at the time of the enquiry and what is the area of land which the holder is entitled to hold. Clause (j) requires the authority to consider whether the proposed retention of land by the holder is in conformity with the provisions of Section 16. Clause (k) requires the authority to consider which particular land out of the total lands held by the holder should be delimited as surplus land. Clause (l) requires the authority to consider any other matter necessary to be considered for the purpose of calculating the ceiling area and delimiting any surplus land. If some diminution in the area held by the person or family unit has occurred between the relevant date and the date of the enquiry, the above clauses require that these be taken note of in accordance with law before any declaration is made under Section 21. These are important matters to be kept in mind especially when in the instant case the diminution has taken place by thrust of another statute, i.e., the Restoration Act. Since the said land is neither encumbered land nor land transferred in contravention of Section 8, it is not liable to be included

in the ceiling holding of the appellant. (emphasis supplied)

38. This judgment is important in that it delineates the scope of Section 18(l) of the 1961 Act, and confines it to calculating ceiling area and de- limiting surplus land , albeit by the application of another statute, namely, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

39. Shri Krishnan Venugopal strongly relied on the observations in Gurdit Singh(supra). This case dealt with Section 32-DD which was introduced into The Pepsu Tenancy and Agricultural Lands Act, 1955 with retrospective effect from 1956. This Section states as follows:

3. The Act was amended by Act 16 of 1962 and Section 32-DD was introduced into the Act with retrospective effect from October 30, 1956. That section reads:

32-DD. Future tenancies in surplus area and certain judgments etc. to be ignored. Notwithstanding anything contained in this Act, for the purposes of determining the surplus area of any person

(a) a tenancy created after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, in any area of land which could have been declared as the surplus area of such person; and

(b) any judgment, decree or order of a court or other authority, obtained after the commencement of that Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored.

40. This Court repelled an argument enlarging the scope of Section 32-DD, which was based on the object sought to be achieved by the Section in the following terms:

12. We are aware that the object of this provision in an Act like the one under consideration is to prevent circumvention of its provisions by dubious and indirect methods. But that is no reason why we should put a construction upon the section which its language can hardly bear. It would have been open to the respondents to allege and prove that the judgment was obtained collusively. But that could have been done only after notice to Appellants 2 and 3 and after giving them an opportunity of being heard. Therefore, to say, as the High Court has said, that no prejudice was caused to Appellants 2 and 3 for want of an opportunity to them of being heard, is neither here nor there. We think the High Court went wrong in assuming that the Collector was right when he ignored the judgment by his order dated May 20, 1963 on the ground that it had the effect of diminishing the area of the first appellant which could have been declared as his surplus.

41. Likewise, as has been held by us hereinabove, it is not possible to state that wherever the expressions transfer and partition occur in Sections 8, 10 and 11 of the 1961 Act, they must be understood as meaning transfers and partitions which are genuine. If the word genuine is added, it would amount to straining the language of these provisions and giving these provisions a construction which they cannot possibly bear a construction that would go against the object of giving the Collector a limited jurisdiction to decide whether lands fall within the ceiling area,

and in so doing, whether transfers and partitions between the cut-off date and commencement date should be ignored. It may be added that the language of Section 11 also leads to the conclusion that even in case of a partition that is made after the cut-off date and before the commencement date, the power of the Collector is not to declare such partition sham, and therefore void, which is for a Civil Court to do, but is only to ignore such partition for the purpose of calculating ceiling area. 42. Shri Krishnan Venugopal then relied upon Uttar Chand (supra). This case also dealt with 1961 Act, the cut-off date in that case being 04.08.1959. As both the transfers in the aforesaid case were prior to 04.08.1959, this Court held that the High Court was not justified in holding that the said transfers were either collusive or fraudulent. This Court held:

5. These sections are of no assistance to the respondent because Section 6 takes within its fold lands belonging to the owner, or his family as a single unit and is not meant to cover the separate or individual property of another member of the family which cannot be clubbed together with land of the concerned owner or family. The argument advanced by the respondent appears to have found favour with the Commissioner, but it was legally erroneous as indicated above. In these circumstances the most important fact to be determined was whether or not any transfer that had been made by the person concerned was prior to or after August 4, 1959. If the transfer was prior to August 4, 1959 then the provisions of the Act would not apply at all. In the instant case, both the transfers being three years prior to the date mentioned above, the Act would not apply to them and the Commissioner and the High Court therefore erred in holding that the lands transferred by Nemichand to his mother should be included in the total area of the land owned by the appellant.

43. What is of importance in this case is that in a similar fact situation, if a transfer took place before the cut-off date mentioned by the 1961 Act, the 1961 Act would not apply so as to include lands subsumed in the said transfers, in calculating the ceiling area.

44. Regard being had to our finding that the Collector□s jurisdiction under the 1961 Act does not go to the extent of declaring a registered partition deed that is made before the cut-off date as being sham, it is unnecessary for us to go into any of the other findings of both the learned judges of this Court in relation to Hindu Law.

45. We are, therefore, of the view that the appeal deserves to be allowed, and the impugned judgment of the Bombay High Court dated 27.11.2007 set aside for the reasons given by us. The judgment of the Sub-Divisional Officer dated 07.05.1984 stands restored, as a result."

(ii) **Damodar Singh and others Vs. State of U.P. and others [2001(Suppl.) R.D. 396].** Paragraph-9 is being quoted below :-

"9. The appellate authority, in view of the provisions of Order 41 Rule 31 CPC being the last authority on facts, was legally required to state the points for determination in the appeal, decision thereon and the reasons for the decision, even in the event where it affirms the

decision of the Prescribe Authority a mere general experience of concurrence with the Prescribed Authority is not sufficient.

10. After noticing the decisions of the Apex Court in Girijanandini v. Bijendra Narain Chaudhary and Ramesh Chandra v. Chunnilal, this Court in Surja Singh and another v. Sohan Lal and others, was pleased to rule as under:

"There is considerable force in this submission. The Code of Civil Procedure lays down insufficient detail, the requirements, which are fulfilled by the trial court in the matter of judgment pronounced by them. Order XX CPC lays down rules in regard to judgment and decree, provides in Rule 4 (2) that the judgment of the court other than a Court Small Causes shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

.....
.....

The judgment of the Supreme Court upon which reliance has been placed by Rajeshwar Pd. cannot be held to lay down that it is open to the Appellate Authority to affirm the finding recorded by the trial court on a question of fact by a mere observation that the trial Court had arrived at that finding "for good reasons" as has been done in the instant case by the lower appellate court."

11. In view of the aforesaid decision and the provisions of Order 41 Rule 31 CPC read with sub - section (1) of section 10 of the Act, the Appellate Authority to required to apply its mind to the facts of the case, state the questions involved in the case and decide the same giving its own reason for the decision. In the present case, the appellate authority failed to discharge its duty and has dismissed the judgment and order dated 30.9.96 by recording its general expression of inference with the Prescribed Authority written and quoting any reason at would amount from the judgment of the appellate authority, relevant portion of which is reproduced below-

.....
.....

12. Thus the judgment and order passed by the appellate authority does not fulfills the requirements of provisions of sub section (1) of Section 38 of the Act read with order 41 Rule 31 CPC and same, therefore, liable to be set aside."

(iii) **Janki Prasad Vs. Sanjay Kumar [AIR 2022 (NOC) 254 (ALL.)]**. Relevant paragraph-17 onwards are being quoted as under :-

"17. It is also relevant to note that the judgment in Smt. Binda Bau and Ors (supra) relies on the Full Bench judgment of this Court in M.S. Khalsa vs. Chiranji Lal (AIR 1976 All 290). The Full Bench in M.S. Khalsa (supra) held that an application for adjournment was within the purview of the Explanation to the Allahabad amendment in Order XVII Rule 2 CPC. Order XVII Rule 2 CPC along with Allahabad amendment is reproduced below:

"Order XVII Rule 2. Procedure if parties fail to appear on day fixed--Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to

dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit. [Explanation.--Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.] High Court Amendments ALLAHABAD.--Add the following:

"Where the evidence, or a substantial portion of the evidence, of any party has already been recorded, and such party fails to appear on such day, the Court may in its discretion proceed with the case as if such party were present, and may dispose of it on the merits. Explanation.--No party shall be deemed to have failed to appear if he is either present or is represented in Court by an agent or pleader, though engaged only for the purpose of making an application."(28-5-1943)

18. Order XVII prescribes the procedure to be followed by the Court in trial of Suits. The procedure to be followed by appeal Court while hearing an appeal is prescribed in Order XLI CPC. The Explanation to Order XVII Rule 2 (Allahabad amendment) only clarifies or explains the phrase "the parties or any of them fail to appear' in Order XVII Rule 2. Explanation added to a particular provision in an enactment cannot be treated as an illustration to define a similar situation or concept in a different provision in the same enactment. The role of an Explanation is to explain the meaning and effect of the main provision to which, it is an explanation and to clear up any doubt or ambiguity in it'. [Dattatraya Govind Mahajan and Ors. vs. State of Maharashtra and Ors (1997) 2 SCC 548; Government of Andhra Pradesh vs. Cooperative Bank (2007) 9 SCC 55]. The Explanation to Order XVII Rule 2 (Allahabad amendment) cannot be read in Order XLI Rule 17 (1) CPC to interpret the phrase "the appellant does not appear when the appeal is called on for hearing'. The phrase has to be interpreted independently of the Explanation to Order XVII Rule 2 CPC.

19. Evidently, the judgments in Mohammad Khalil (supra) and Smt. Binda Bau & Ors(supra) are not applicable in the present case and do not help the respondents.

20. The substantial question of law framed by this Court is decided in favour of the appellant and it is held that the Explanation to Order XLI Rule 17 CPC also applies in cases where the counsel for the appellant, though physically present in the Court when the appeal is called on for hearing, refuses to argue the appeal or for any other reason is not able to address the Court and in such situations the appellate Court has no jurisdiction to decide the appeal on merits. For the aforesaid reason, the lower appellate Court had exceeded its jurisdiction in deciding the appeal on merits vide its judgment dated 23.9.2015 and the appeal is to be allowed.

21. The question that remains to be decided is regarding the order to be passed by this Court. By virtue of Section 107 CPC the appellate Courts have the same power as are conferred on Courts of Original jurisdiction in respect of Suits instituted therein. Order XLI Rule 33 CPC provides that the appellate Court shall have the power to pass any order

which ought to have been passed and to pass such further other orders as the case may require. A similar situation arose before the Division Bench of this Court in Nasir Khan versus Itwari & Ors.; AIR 1924 All 144 and the Division Bench while allowing the Second Appeal passed order which the first appellate Court should have passed. The Division Bench dismissed the appeal of the Court below for default and permitted the appellant to file an application for restoration of appeal which was to be decided by the lower appellate Court on merits.

22. Following the Division Bench judgment of this Court in Nasir Khan (supra), the present Second Appeal is allowed, the judgment and decree of the lower appellate Court is set aside and the Regular Civil Appeal No. 5000248 of 2013 (Janki Prasad vs. Sanjay Kumar and others) filed by the appellant is dismissed in default. The appellant shall have the liberty to file an application for restoration of the said appeal before the lower appellate Court which, if filed, shall be decided by the lower appellate Court in accordance with law.

23. With the aforesaid observations, the Second Appeal is allowed."

(iv) Benny D'Souza Vs. Melwin D'Souza [AIRONLINE 2023 SC 1320]. The order is being quoted as under :-

"1. Leave granted.

The appellants herein are the plaintiffs who were the appellant in RSA No.196/2022. The only grievance of the appellants herein is with regard to the dismissal of the said appeal vide order dated 26.09.2023 on merits although the appellants were not represented inasmuch as there was no counsel who appeared for the appellants and the junior counsel for the appellants submitted that the senior counsel engaged in the matter, was not available as his cousin had passed away. Therefore, on account of a bereavement in the family of the arguing counsel there was no representation on behalf of the appellants before the High Court.

2. Learned senior counsel appearing for the appellants submitted that the High Court could have dismissed the appeal for non-prosecution in terms of the order XLI Rule 17 CPC and particularly the Explanation thereto instead of dismissing the appeal on merits by stating that no substantial question of law was made out.

3. Therefore, the learned senior counsel submitted that the impugned judgment may be set aside and the matter may be remanded to the High Court for consideration on the merits of the appeal.

4. Per contra, learned counsel appearing for the respondent supported the impugned judgment and contended that the appellants consistently failed to appear before the High Court and therefore, the High Court had no option but to pass the impugned judgment and that there is no merit in the appeal.

5. Having heard learned senior counsel for the appellants and learned counsel for the respondents, at the outset, we extract Order XLI Rule 17 of the CPC which reads as under:

"17. Dismissal of appeal for appellant's default :-

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation. - Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits."

6. The Explanation categorically states that if the appellant does not appear when the appeal is called for hearing it can only be dismissed for non-prosecution and not on merits.

7. However, the impugned judgment is a dismissal of the appeal on merits which is contrary to the aforesaid provisions and particularly the Explanation thereto. On that short ground alone the appeal is allowed the impugned order is set aside.

The RSA No.196/2022 is restored on the file of the High Court.

The parties are at liberty to advance arguments on the merits of the case.

All contentions are left open.

The appeal is allowed and disposed of in the aforesaid terms.

No costs.

Pending application(s), if any, shall stand disposed of."

16. On the other hand, learned Additional CSC vehemently opposed the arguments advanced by learned Senior Counsel for the petitioner and submitted that the impugned orders do not suffer from any infirmity or illegality and are just and valid.

17. Learned counsel for the respondent submitted that the objections raised by the father-in-law of the petitioner Shri Pirtha Singh through which a grievance was also raised in respect of half share belonging to the petitioner has been rejected by the order contained in Annexure-1 to the writ petition in view of the fact that over the entire holding of Shri Pritha Singh the petitioner or her husband were never recorded on any portion of the land, and they were never in possession, the objections if any are misconceived.

18. Learned counsel for the respondent further submitted that in his objection Shri Pritha Singh has also taken a ground that the share of the petitioner has not being excluded in addition to the grounds raised as alleged in para under reply.

19. Learned counsel for the respondent further stated that no doubt a report was submitted by the Advocate Commissioner but in khasra extract of 1378 fasli to 1380 fasli the source of irrigation in respect of the plots in question was shown to be tube well.

20. Learned counsel for the respondent submitted that the prescribed authority rejected the objections filed by Shri Pritha Singh after considering the entire arguments, objections and the evidence on record.

21. Learned counsel for the respondent further submitted that the

prescribed authority has recorded the categorical finding of fact after considering the evidence on record that the entire land is irrigated and after relying and considering the Khatauni 1358 fasli it was held that the petitioner cannot have any right.

22. Learned counsel for the respondent submitted that in view of the interim order the possession of the land over the land declared as surplus has not been taken but in view of the facts stated in earlier paras of the counter affidavit the ad interim order stay deserves to be vacated.

23. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the law report relied upon by the parties.

24. For deciding the issued involved in the matter, Order 41 Rule 31 CPC is quoted below:

"Order 41, Rule 31, Contents, date and signature of judgment - The judgment of the appellate court shall be in writing and shall state –

a) the points of determination

b) the decision thereon,

c) the reasons for the decisions, and

d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

25. On bare perusal of the provisions referred herein above, last authority on facts, was legally required to state the points for determination in the appeal, decision thereon and the reasons for the decision, even in the event where it affirms the decision of the Prescribe Authority a mere general experience of concurrence with the Prescribed Authority is not sufficient. Therefore, the order passed by the appellate authority which is impugned in the writ petition is not sustainable in the eyes of law and is liable to be set aside by this Court.

26. The disputed land was recorded in the name of Pirtha Singh, father in law of the petitioner, thereafter a notice under Section 10(2) of the Ceiling Imposition of Ceiling and Land Holdings Act was issued and served to Pirtha Singh, recorded tenure holder on 10.12.1975. Subsequently Pirtha Singh filed an objection on 24.12.1975 against the aforesaid notice under Section 10(2) of the Ceiling Act before the prescribed authority. He claimed much of the land was unirrigated, and Gata Nos. 139 and 211 were wrongly shown as irrigated. Some land had been transferred through registered sale deeds before the cut-off date 8.6.1973. The Advocate Commissioner submitted his commission report stating that the land was unirrigated. The prescribed authority vide order dated 18.6.1976, declared 11.70 acres of irrigated land as surplus without considering the legal point that Ram Singh was alive on 8.6.1973, hence the family was entitled to an additional 2 hectares under Section 5(3)(a). Due to non-consideration of aforesaid aspect of the matter, the order

impugned suffers from apparent illegality and is liable to be set aside.

27. The petitioner filed multiple appeals and applications, including Writ Petition No. 50(M/S) (Ceiling) of 2002 before this Court against the impugned orders dated 29.4.2002 and 24.2.2000, passed by opposite parties Nos.2 and 3 which was disposed of finally on 29.8.2002 with the direction to the Additional Commissioner, Lucknow Division, Lucknow to consider and dispose of the petitioner's restoration application as expeditiously as possible within 6 weeks from the date of production of the certified copy of the order. She seeks to set aside the impugned orders and have her case reconsidered. The petitioner challenges orders dated 29.4.2002 and 24.2.2000, declaring her land as surplus.

28. The authorities wrongly classified her land as irrigated, ignoring an earlier report dated 5.4.1976 that classified it as unirrigated. The order of the Additional Commissioner dated 29.4.2002 was ex-parte, without giving the petitioner a hearing opportunity. The petitioner filed a writ petition No.50 (M/S) (Ceiling) of 2002, which was disposed of on 29.8.2002, directing the Additional Commissioner to consider her restoration application. The Additional Commissioner rejected the restoration application on 1.10.2002, which the petitioner claims, was done illegally and arbitrarily. The petitioner seeks to set aside the impugned orders and requests the Court to direct the parties to maintain the status quo over the disputed land.

29. The disputed land was the ancestral property and recorded in Jiman-1, as such, the petitioner was having 1/2 share in the disputed land and the land declared as a surplus of her share is totally illegal. It is also pointed out that in the notice, Gata Nos.139 and 211 were wrongly mentioned as irrigated land and in fact, the aforesaid land was unirrigated. After lapse of long period, the situation of the spot has been changed and facility of irrigation is available to the 80% agricultural land at present time, hence on the basis of the aforesaid inspection report regarding irrigated and non-irrigated land no decision can be taken. The respondent No.3 passed the impugned order on 24.2.2000 on the basis of the aforesaid inspection report dated 7.12.1999 and treated the whole land of the petitioner to be irrigated land, the report could not be taken into account of the later stage.

30. Based on the Advocate Commissioner's spot inspection and report dated 5.4.1976, plots gata Nos. 139 and 211 were found to be unirrigated. The report further states that no tube well or Nahar exists near these plots and that irrigation was solely dependent on a pond, which qualifies the plots as unirrigated under Section 4(A) of the U.P. Imposition of Ceiling on Land Holdings Act. Despite this, the prescribed authority, in its judgment dated 18.6.1976, held that these plots were irrigated, citing the existence of a tube well in adjoining gata No. 212, however, no documentary evidence supports the claim that plots 139 and 211 are irrigated, and no tube well exists directly on them. The prescribed authority also ignored the Commissioner's report of 5.4.1976, leading to an erroneous and illegal finding that plot Nos.139 and 211 are irrigated.

31. After remand, the Additional Collector/prescribed authority, Sitapur himself made the spot inspection and

submitted the report on 7.12.1999, in which it is specifically stated that area 0.332 Hectare of gata No. 292 is not the agricultural land due to jungle and brick kiln, but the prescribed authority has not excluded the aforesaid land from the ceiling in illegal and arbitrary manner.

32. In view of Section- 4(A) of the U.P. Imposition of Ceiling and Land Holding Act, the determination regarding the irrigated and non irrigated land should be made from the date of issuance of the notice under Section 10(2) of the U.P. Imposition of Ceiling and Land Holding Act, and on the basis of the relevant Khasra 1378, 1379 and 1380 fasli, but not on the basis of the present position. Due to non-consideration of this aspect of the matter, the impugned order suffers from apparent illegality and is liable to be quashed.

33. The prescribed authority has passed the impugned order dated 24.2.2000 without considering the legal point that at the time of enforcement of the Ceiling Act dated 8.6.1973, the petitioner's husband Ram Singh was alive, as such, the petitioner namely Sushila Devi being his widow is entitled for the benefit of two Hectare additional irrigated land according to Section 5(3) (a) of the U.P. Imposition of Ceiling and Land Holding Act, which has been considered by the prescribed Authority at the time of passing the earlier judgment and order dated 28.2.1979 and given the benefit of two Hectare additional irrigated land to the petitioner, but after remand in the subsequent order dated 24.2.2000, the prescribed authority has not considered the aforesaid legal point and has not given the benefit of two hectare additional irrigated land to the petitioner illegally and no finding given regarding the issue.

33. Submission of respondent's counsel that the objections raised by the father-in-law of the petitioner Shri Pirtha Singh through which a grievance was also raised in respect of half share belonging to the petitioner has been rejected by the order contained in Annexure-1 to the writ petition in view of the fact that over the entire holding of Shri Pritha Singh the petitioner or her husband were never recorded on any portion of the land, the claim setup by the petitioner that the disputed land was ancestral property and recorded in Jiman-1, as such the petitioner was having half share in the disputed land and the land declared as surplus of the share, is totally illegal, therefore, the argument advanced by the learned counsel for the respondent is misconceived and is not tenable in the eyes of law. The land in the share of Pirtha Singh was liable to be excluded in addition to the grounds raised hereinabove.

34. Learned counsel for the respondent has admitted that report was submitted by the Advocate Commissioner that the land is unirrigated in regard to the plot in question and was not irrigated by the tubewell. The source of irrigation was pond, therefore, the objection raised by the respondent is wholly misconceived and incorrect.

35. On perusal of the judgment in the case of Damodar Singh and others (Supra), on perusal of aforesaid paragraphs, there is considerable force in the submission. The Code of Civil Procedure lays down insufficient detail, the requirements, which are fulfilled by the trial court in the matter of judgment pronounced by them. Order XX CPC lays down rules in regard to judgment and decree, provides in Rule 4 (2) that the

judgment of the court other than a Court Small Causes shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. The judgment cannot be held to lay down that it is open to the Appellate Authority to affirm the finding recorded by the trial court on a question of fact by a mere observation that the trial Court had arrived at that finding "for good reasons" as has been done in the instant case by the lower appellate court."

36. In view of the aforesaid decision and the provisions of Order 41 Rule 31 CPC read with sub - section (1) of section 10 of the Act, the Appellate Authority to required to apply its mind to the facts of the case, state the questions involved in the case and decide the same giving its own reason for the decision. In the present case, the appellate authority failed to discharge its duty and has dismissed the judgment and order dated 29.04.2002 and 01.10.2002 by recording its general expression of inference with the Prescribed Authority written and quoting any reason at would amount from the judgment of the appellate authority.

37. Thus the judgment and order passed by the appellate authority does not fulfills the requirements of provisions of sub section (1) of Section 38 of the Act read with order 41 Rule 31 CPC and same, therefore, liable to be set aside.

38. The other points raised by learned Senior Counsel is that the appellate authority while rejecting the restoration application has not considered the grounds taken in the application and without taking into consideration the facts found that no ground has been made out to interfere in the judgment and order dated 29.04.2002, therefore, the order passed on the application on 01.10.2002 is per se illegal and is liable to be set aside by this Court. The prescribed authority while remanding the matter has not taken into consideration the question involved while remanding the matter and in a very cursory manner has passed the order. Both the courts below have committed manifest error of law in passing the impugned orders.

39. In view of the foregoing discussion, the impugned orders dated 1.10.2002, 29.4.2002 and 24.2.2000 are hereby quashed. The writ petition succeeds and is **allowed.**

40. The prescribed authority is directed to decide the objection filed by the petitioner in accordance with law and in the mean time, the prescribed authority shall not lease out the surplus land to any person.

41. No order as to costs.

(2025) 9 ILRA 1112
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.09.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE PRASHANT KUMAR, J.

Writ - C No. 27040 of 2025

M/S Dharti Agro Industries Pvt. Ltd. ...Petitioner

Versus

The Managing Director, Pashchimanchal Vidyut Vitran Ltd. & Ors. ...Respondents

Counsel for the Petitioner:
Ashish Kumar, Deepak Kumar Pandey, Sandeep Pandey

Counsel for the Respondents:
Kartikeya Saran

Issue for Consideration

Whether as per Section 238 of IB Code, 2016, the provisions of Electricity Act, 2003 and Electricity Supply Code, 2005 would be overridden by Insolvency and Bankruptcy Code, 2016?

Head Notes

The Constitution of India, 1950-Article 226; The Insolvency and Bankruptcy Code, 2016-Section 238; The Electricity Act, 2003-Sections 173 & 174; The Electricity Supply Code, 2005- PVVPL had already participated in liquidation process and had made their claim with the liquidator, hence, it will not be open for the respondents to recover outstanding dues under the Electricity Act, 2003, specially when IB Code, 2016 has been triggered. - IB Code, 2016 will have overriding effect over Electricity Act, 2003, the respondents will get their outstanding dues only in the liquidation proceeding - Respondents cannot avail two relief at the same time - They have participated in the liquidation proceedings but at the same time pressurizing the petitioner to pay dues of the corporate debtor under the provisions of Electricity Act- Respondents are directed to install power connection in the premises of the petitioner- Petition allowed.

Held- Section 238 of IB Code, 2016 clearly shows that it has overriding effect over other Acts. Similar provision is also found in Electricity Act, 2003. Since, IB Code, 2016 is later Act, hence, it will have overriding effect on Electricity Act, 2003 - *Lex Posterior Devogat Priori*. (E-15) **(Para 41, 42, 45)**

Case Law Cited

Union of India vs. Shah Goverdhan L. Kabra Teachers' College (2002) 8 SCC 228; UCO Bank and another v. Dipak Debbarma and others (2017) 2 SCC 385; Ahemdabad Electricity Supply Company Ltd. vs. Gujarat Inns Pvt. Ltd., 2004 (3) SCC 587; Southern Power Distribution Company of Telengana Ltd. through Its CMD & Ors vs. Gopal Agarwal & Ors. passed in Civil Appeal No.1918 of 2016; Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. AIR 2023 SC 3501; Civil Appeal No.5556 of 2023- "Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited"; M/s Uttrakhand Power Corporation Limited Versus M/s Shyam Baba Developers & Builders Pvt. Ltd., Company Appeal (AT) No.346 of 2023; K.C. Ninan v. Kerala State Electricity Board and others, 2023 SCC Online SC 663 : (2023) 9 S.C.R. 637; Ghanshyam Mishra and sons Pvt. Ltd. through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the director and others, (2021) 21 SC 196; Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101; Duncans Industries Ltd. A.J. Agorchem, (2019) 9 SCC 725: AIR 2019 Supreme Court 5472; M/s Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407; CIT vs. Monnet Ispat and Energy Ltd., (2018) 18 SCC 786.; M/s Platinum Rent A Car (India) Private Limited vs. M/s Quest Offices, Limited (Company Appeal (AT) (CH) (Ins) No.448 of 2022); K. Kishan vs. Vijay Nirman Company Private Limited, (2018) 17 SCC 662

List of Acts

The Constitution of India, 1950; The Insolvency and Bankruptcy Code, 2016; The Electricity Act, 2003; The Electricity Supply Code, 2005

List of Keywords

Lex Posterior Devogat Priori; IB Code has overriding effect over Electricity Act ; Corporate debtor under Electricity Act;

Case Arising From

Respondent nos.1 to 3 are refusing to grant electricity connection to the petitioner on the ground that there was electricity dues against the erstwhile owner and the dues has to be recovered from the premises as per provision of Electricity Act, 2003 and the Electricity Supply Code, 2005 and unless and until the same is cleared, electricity connection cannot be granted.

Appearances for Parties

Counsel for Petitioner(s) : Ashish Kumar, Deepak Kumar Pandey, Sandeep Pandey
Counsel for Respondent(s) : Kartikeya Saran

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

1. Mr. Ashish Kumar, learned counsel appears for the petitioner and Mr. Kartikeya Saran, learned Additional Advocate General appears for the State-respondents.

2. The factual matrix of the case which has given rise to instant dispute are as under :-

The petitioner is a private company engaged in trading of steel products at Delhi. The petitioner came across an advertisement in the newspaper dated 13th/14th April, 2022 wherein auction purchasers were invited to participate in the online auction sale of immovable assets of M/s Chaudhary Ingots Pvt. Ltd. on ?as is where is whatever there is basis?. Apparently, the company, i.e. Ms. Chaudhary Ingots P.Ltd. had gone into insolvency but COC did not approve the resolution plan and thereafter, the company had gone into liquidation. Under the direction of NCLT, Allahabad auction seller/Liquidator Sandeep Goel called for online auction of the assets of the debtor company, to be conducted by a company known as M/s Link Star Infosys Pvt. Ltd.

3. The petitioner, who was interested in buying immovable assets of the debtor company, had deposited earnest money of Rs.30 lakhs as fixed by the auctioneer, and participated in the auction wherein the reserved price was fixed at Rs.284.39 lakhs. During auction proceedings against the reserved price Rs.284.39 lakhs, the petitioner had given bid of Rs.518.39 lakhs. His bid being the highest, he was declared successful bidder. As per the auction conditions at the end of the day of auction, the balance amount was to be paid by the purchaser to the Liquidator. The petitioner paid the full amount, towards full and final payment of the auction money. Thereafter, the sale certificate was issued on 7th July, 2022 in favour of the petitioner and the possession letter was also issued on 27th July, 2022 for the immovable properties of M/s Chaudhary Ingots Pvt. Ltd. Later on, the title deed/sale deed was also executed on 29th May, 2024 of the auctioned property in the name of the petitioner.

4. Thereafter, the petitioner company had applied for electricity connection on the said property but the same was refused by respondent no.1 on the ground that there was certain dues by the erstwhile owner on the premises and unless and until the same is cleared, no electricity connection can be granted to the petitioner. The petitioner made number of representations to the respondent but could not get any relief. On the contrary, respondent nos.1 to 3 asked the petitioner to deposit Rs.4,92,69,142, outstanding electricity dues of the erstwhile company.

5. Aggrieved by the demand to pay outstanding dues of the erstwhile company, the petitioner moved a writ petition before this Court being Writ C No.9142 of 2025 (M/s Dharti Agro Industries v. The Managing Director, PVVNL). This writ petition was disposed of vide order dated 10th April, 2025. The said order is reproduced below :

"1. Heard learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India

wherein the writ petitioner has prayed for the following reliefs:

"(i) Issue a writ order or direction in the nature of mandamus directing the respondent Pashchimanchal Vidyut Vitran Nigam Ltd (PVVNL) to install the power connection of 10 KW at the petitioner's premises situated at Vill: Vehelna, Meerut Road, Muzaffar Nagar, U.P. Pincode-251003 within certain stipulated period of time as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.

(ii) Issue a writ order or direction in the nature of mandamus in the nature of mandamus commanding the respondent no.1 to take decision on the representation of the petitioner dated: 29.08.2024 and 14.09.2024 in light of decision rendered by Hon'ble Apex Court in Civil Appeal No. 1918 of 2016 Southern Power Distribution Company of Telengana Ltd through its CMD & ORS Versus Gopal Agarwal & ORS within certain stipulated period of time as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.

iii) Issuance of other appropriate instruction/instructions, order/orders, direction/directions in light of the facts and circumstances of this case to compensate the loss of petitioner's investment of approx. Rs.5.55 Crore made since Apr/May-2022, which has intentionally entangled into unwarranted dispute from the last 30-31 months by the officers working under control of the respondent no.1."

3. Counsel appearing for the petitioner submits that the he is not pressing the relief No.(iii).

4. Upon perusal of the record and and after hearing counsel appearing on behalf of the parties, we are of the view that respondents authority should grant an opportunity of hearing to the petitioner with regard to connection to be given to the petitioner. The respondents authority should consider the judgement of the Supreme Court with regard to non recovery of payments from the present owner with regard to the dues of the erstwhile owner when the property is bought through liquidation process. The petitioner shall be at liberty to produce the judgement of the Supreme Court before the respondents authority. The respondents authority is directed to consider the said judgment, and thereafter, pass a reasoned order in accordance with law within a period of six weeks from date. If the authority finds that the electricity connection should be granted to the petitioner, it shall grant the same expeditiously without any delay.

5. With the aforesaid directions, the writ petition is disposed of."

6. In response to the aforesaid order, the petitioner made representation on 15th April, 2025. However, no decision was taken, so the petitioner again made a fresh representation on 15th May, 2025, in which a decision was taken whereby respondent no.3 rejected the representation and held that petitioner had to pay Rs.4,041,92,94/- to get the electricity connection as there was electricity dues outstanding against the property. Aggrieved by the order, the petitioner had filed the instant writ petition seeking following reliefs :-

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated

15.05.2025 passed by respondent no.3/Executive Engineer, (SS) Pashchimanchal Vidyut Vitran Nigam Ltd. (PVVNL) Near Sport Stadium, Numais Ground, Muzaffar Nagar, U.P.-251001.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent Pashchimanchal Vidyut Vitran Nigam Ltd. (PVVNL) to install the power connection of 10 KW at the petitioner?s premises situated at Vill: Vehelna, Meerut Road, Muzaffar Nagar, U.P. Pincode-251003 within certain stipulated period of time as this Hon?ble Court may deem fit and proper considering the facts and circumstances of the case.

(iii) issue any other writ or direction as this Hon?ble Court may deem fit and proper considering the facts and circumstances of the case."

ARGUMENT ON BEHALF OF THE PETITIONER

7. Counsel for the petitioner submitted that the erstwhile owner of the property namely, M/s Chaudhary Ingots Pvt. Ltd. seems to have outstanding electricity dues of Rs.492.69 lakhs and respondent nos.1 to 3 are refusing to grant electricity connection to the petitioner on the ground that there was electricity dues against the erstwhile owner and the dues has to be recovered from the premises as per provision of Electricity Act, 2003 and the Electricity Supply Code, 2005 and unless and until the same is cleared, electricity connection cannot be granted.

8. Learned counsel further submits that the petitioner has bought the property in an online auction held by the liquidator under Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IB Code for the sake of brevity). He further submits that IB Code, 2016 is a special Act dealing with the entire subject of insolvency, bankruptcy and winding up of companies. He further submitted that respondents had participated in the liquidation proceeding and had made a claim. Their claim would be decided by the liquidator and the same would be paid as per the mechanism set up under the IB Code.

9. He further submitted that the provisions of Section 173 and 174 of Electricity Act, 2003 read with Electricity Supply Code, 2005 would not prevail over the provisions of IB Code, 2016 as IB Code, 2016 is a later enactment. As per Section 238 of IB Code, 2016, the provisions of Electricity Act, 2003 and Electricity Supply Code, 2005 would be overriden by Insolvency and Bankruptcy Code, 2016.

10. He further submits that when there is overlapping of two enactments, the doctrine of pith and substance has to be applied to find true nature of Legislation. To buttress his argument, he has placed reliance on decision of Hon'ble Supreme Court in the matter of **Union of India vs. Shah Goverdhan L. Kabra Teachers? College (2002) 8 SCC 228 and UCO Bank and another v. Dipak Debbarma and others (2017) 2 SCC 385.**

11. The counsel for the petitioner has placed reliance on the ratio laid down in the matter of **Ahemdabad Electricity Supply Company Ltd. vs. Gujarat Inns Pvt. Ltd., 2004 (3) SCC 587,** wherein it has been held that the auction purchaser cannot be denied power supply due to non-payment of arrears by the erstwhile company.

12. He further placed reliance on the ratio laid down by Hon?ble Supreme Court in the matter of **Southern Power Distribution Company of Telengana Ltd. through Its CMD & Ors vs. Gopal Agarwal & Ors. passed in Civil Appeal No.1918 of 2016** wherein the Court has held as follows:-

"..The High Court relied upon the judgment in Isha Marbles(supra) to grant relief to the First Respondent. It was held in the said judgement that an auction purchaser cannot be called upon to clear the past arrears. It was also held that a power connection to an auction purchaser cannot be withheld for the dues of the past owner.

"..NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479, the purchaser in an auction sale conducted by the official liquidator on ?as is where is? and ?whatever there is? basis was found not liable for payment of the electricity arrears. In the said case an advertisement was issued by the official liquidator for sale of moveable and immoveable property of M/s Konark Paper and Industries Limited on ?as is where is? and whatever there is? basis. The auction purchaser applied for a fresh electricity connection to its unit which was denied on the ground of non payment of arrears by the past owner. After considering the judgments in Ahemdabad Electricity Company (supra) and Isha Marbles (supra), this Court held that the request of the auction purchaser for a fresh connection could not have been rejected."

13. He further submitted that Hon'ble Supreme Court has dealt with identical situation in **Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. AIR 2023 SC 3501** wherein Court has held that the electricity supply company (i.e. respondent herein) by virtue of Electricity Supply Code, 2005 and as per agreement between the parties, wherein charge was created on the assets of the corporate debtor, but in case of Insolvency Proceedings the respondent herein (the electricity supply company) would be a secured creditor towards its corporate debtor and its claim would be classified as per provision prescribed in section 53 of IB Code, 2016 i.e. as per ?waterfall mechanism?. In paragraph 52 of the judgment, the Court has held as held as follows:-

"52. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs. In that case, Section 142A of the Customs Act 1962 was in issue authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned in the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case inay be, the respondent authority only has a limited

jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated"

It was further held that Section 238 of this Code shall override provisions of Electricity Supply Code, 2005 and the Electricity Act, 2005. The Hon'ble Supreme Court in the present judgment had relied upon *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*, wherein, it was held that owing to Section 238 of the IBC, the Code would prevail over the Customs Act, 1962. Similarly, *in Duncans Industries Ltd. v. AJ Agrochem, Section 16G of the Tea Act, 1953*, which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In view of the same, the Court, in the present case held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003, despite the former containing two specific provisions, which opens with non-obstante clauses (i.e., Sections 173 and 174 of the 2003 Act).

14. He further submitted that the respondent herein (PVVNL) undoubtedly is a government corporation but it cannot be strictly said to be government participation as their functions are replicated by other private entities, i.e. supply of electricity, generation, transmission and distribution of electricity. The private entities are also entitled to hold licenses, hence, dues of PVVNL cannot be said to be government dues in the strict sense as per Section 53(1)(f) of the IBC.

15. He further submitted that in Civil Appeal No.5556 of 2023- ***"Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited".*** The power company was insisting for payment of arrears of its dues. The Hon'ble Supreme Court relied on the earlier judgment passed in **"Paschimanchal Vidyut Vitran Nigam Ltd."** (supra) and has held as follows:-

"In our opinion, the legal issue is covered by the judgment of this Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others" and the order of this Court in "Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another. The appellant Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection."

16. He further submitted that in **M/s Uttrakhand Power Corporation Limited Versus M/s Shyam Baba Developers & Builders Pvt. Ltd., Company Appeal (AT) No.346 of 2023 the judgment rendered by Hon'ble Apex Court in K.C. Ninan v. Kerala State Electricity Board and others, 2023 SCC Online SC 663 : (2023) 9 S.C.R. 637** has been considered and it was held that K.C. Ninan's case (supra) passed in Civil Appeal

No 2109-2110 of 2004 was not applicable as aforesaid judgment is not in reference to liquidation proceeding where electricity authority has filed any claim.

17. Counsel for the petitioner submits that Insolvency and Bankruptcy Code superseded the Indian Electricity Act or Rules framed therein that Section 238 of IB Code, 2016 will override the provisions of section 173, 174 of Electricity Act, 2003 read with Electricity Supply Code, 2005.

ARGUMENT ON BEHALF OF RESPONDENT

18. Mr. Kartikeya Saran, learned Additional Advocate General assisted by Mr. S.C. Upadhyay, learned Standing Counsel appears on behalf of State-respondent nos.1, 2 and 3 and stated that in the field of supply of electricity, the provisions of Electricity Act, 2003 is fully applicable.

19. He submitted that on plain reading of the aforesaid sections clearly shows that provisions of Electricity Act, 2003 would have primacy over all laws including IB Code, 2016. He added that the provisions of the Electricity Act, 2003 shows that the Act, 2003 is a special Act with non-obstante clause and has overriding effect over any other law. He further submitted that as far as recovery of electricity dues are concerned, the Electricity Act, 2003 lays down a special mechanism, and hence, the role of electricity supply by PVVNL (respondent nos.1 to 3) would not be subordinate or subject to priority claims mechanism under IB Code, 2016, hence, the respondents can recover the dues from the petitioner, which was over the immovable property bought by the petitioner.

20. He next submitted that the mechanism for speedy recovery of electricity has to be given full effect and for this he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **K.C. Ninan** (supra) wherein Court has held as follows:

"107. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee."

ANALYSIS

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

22. The relevant provisions of the Electricity Act, 2003 are quoted hereunder:-

"Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days? notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off

the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

x x x x

***Section 173**. Inconsistency in laws. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989)*

***Section 174**. Act to have overriding effect.-Save as otherwise in section 173, the provisions of this Act shall have effect notwithstanding, anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

***Section 175**. Provisions of this Act to be in addition to and not in derogation of other laws- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."*

23. By virtue of Section 181(2)(x) of the 2003 Act, State Commissions are empowered to frame regulations. Section 50 empowers the State Commissions to frame the "Electricity Supply Code" to provide for recovery of electricity charges, disconnection of supply of electricity for non-payment, etc. In the present case, the Uttar Pradesh State Commission had framed the U.P. Electricity Supply Code, 2005. The relevant Clause 4.3 (f) (iv) of the Code is reproduced hereunder:

"The outstanding dues will be first charge on the assets of the company, and the licensee shall ensure that this is entered in an agreement with new applicant."

Clause 6.15 of the 2005 Code lays that recovery of arrears shall be in accordance with the provisions of the Uttar

Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958:

" Clause 6.15 Recovery of Arrears

(a) The payments due to the Licensee shall be recovered as per provision of Section 56 of the Act, and arrears of land revenue as per the provisions of the U.P. Government Electrical Undertaking (Dues Recovery) Act, 1958, as amended from time to time. (b) Notwithstanding anything contained in any other law for the time being in force, no sum dre from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges of electricity supplied, and the licensee shall not cut off the supply of the electricity.

(Explanation: The date from which such charges becomes 'first due', needs to be correctly interpreted. If as a result of regular meter reading/inspection of installation of consumer, such charges / penalties levied as per this code or tariff schedule, shall become first due after 15 days of receipt of such a bill by consumer, and such bill shall be provided to the consumer not later than two billing cycle for that category of consumer)."

24. These provisions in the 2003 Act and the U.P. Electricity Supply Code form the legal framework for recovery of dues by various kinds of licensees under the 2003 Act.

25. As previously stated, the corporate debtor had entered into an agreement with PVVNL for supply of electricity on 14-02-2010 which provided that outstanding electricity dues would constitute a 'charge' on its assets, which was in accordance with Clause 4.3(f) (iv) of the 2005 Code. Clause 8 of the agreement also mentioned that the parties would be governed by the provisions of the Electricity Act, 2003.

26. The issue as to whether arrears of electricity can become a charge or encumbrance over the premises has been decided in the matter of K.C. Ninan (supra) wherein it has been held as under?-

"117. In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new infrastructure and maintaining the existing infrastructure. In the absence of such a provision, Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers.

341. Taking all facts and circumstances into consideration, including

the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers."

27. The Hon'ble Supreme Court while deciding the abovementioned case of **K.C. Ninan** (supra) had confined its ratio on the Electricity Act and the Supply Code but had no opportunity to deal with the situation wherein there was a conflict between the two enactments, hence, the ratio laid down by the Hon?ble Supreme Court in the matter of **K.C. Kinnan** (supra) would only be applicable, when there is dues outstanding by the previous owner, but not if the property was settled by a proceeding under the IB Code.

INSOLVENCY & BANKRUPTCY CODE, 2016

28. The Bankruptcy Law Reforms Committee Report, 2015 had made following recommendation :-

"The Committee has recommended to keep the right of the Central and State Government in the distribution waterfall in liquidation at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and developing a market for unsecured financing (including the development of bond markets). In the long run, this would increase the availability of finance, reduce the cost of capital, promote entrepreneurship and lead to faster economic growth. The Government also will be the beneficiary of this process as economic growth will increase revenues. Further, efficiency enhancement and consequent greater value capture through the proposed insolvency regime will bring in additional gains to both the economy and the exchequer."

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**************** *"For the remaining creditors who participate in te collective action of Liquidation, the Committee debated on the waterfall of liabilities that should hold in Liquidation in the new Code. Across different jurisdictions, the observation is that secured creditors have first priority on the realizations, and that these are typically paid out net of the costs of insolvency resolution and Liquidation. In order to bring the practices in India in-line with the global practice, and to ensure that the objectives of this proposed Code is met, the Committee recommends that the waterfall in Liquidation should be as follows:*

1. Costs of IRP and liquidation.

2. Secured creditors and Workmen dues capped up to three months from the start of IRP.

3. Employees capped up to three months.

4. Dues to unsecured financial creditors, debts payable to workmen in respect of the period beginning twelve months before the liquidation commencement date and ending three months before the liquidation commencement date;

5. Any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years before the liquidation

commencement date; any debts of the secured creditor for any amount unpaid following the enforcement of security interest

6. Remaining debt

7. Surplus to shareholders." 23

29. Thereafter, Insolvency and Bankruptcy Code, 2016 was enacted with an objective of unifying legal regime on commercial insolvency wherein if corporate debtor defaults in payment of the debt, the creditor (both financial and operational) can initiate insolvency proceeding, if the value of the debt crosses a particular amount. Once the insolvency proceeding has been initiated the adjudicating authority only has to determine whether there is existence of a default. Once the adjudicating authority is convinced that there is a default, it initiates insolvency proceeding. The Committee of Creditors (hereinafter referred to as COC for the sake of brevity) decides whether Resolution Plan should be initiated or the corporate debtor company may be put into liquidation.

30. Section 33 of IB Code, 2016 lays down provision for initiation of liquidation. Once the liquidation process is initiated, Liquidator is appointed to carry out liquidation process. The powers and duties of the Liquidator are prescribed by Section 35 of IB Code, 2016, which includes verification of claim of the creditors, evaluation of assets of the corporate debtor. The Liquidator has to issue public announcement to creditors and other persons to submit their claims in relation to corporate debtor within 30 days of initiation of liquidation process. After receipt of the claim, the Liquidator has to verify the claims and for that he may ask evidence for the purpose of verification. The adjudicating authority also does not have power to evaluate commercial decision of COC and once COC has decided for liquidation, the liquidation process has to begin. Section 53 of Insolvency and Bankruptcy Code, 2016 lays down a mechanism for distribution of assets.

31. Section 238 of IB Code establishes the overriding effect of the Code, stating that the provisions of the Code will take precedence over any other enactment which is inconsistent or in conflict of the Code.

Section 238 of IB Code: Provisions of this Code to override other laws

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

32. In the Rajya Sabha debates, on 29th July, 2019, when the Bill for amending IB Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC.[?]

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly makingit binding on the Government. It is one of the ways in which we providing that. The Government will not are raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would individuals and not company. There will be against successful resolution will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. be proceeded against ?? criminal proceedings applicant. There Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear with (emphasis supplied)"

33. The Hon?ble Supreme Court in the matter of **Ghanshyam Mishra and sons Pvt. Ltd. through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the director and others, (2021) 21 SC 196** has held as under :-

"73. It could thus be seen, that in the speech the Hon'ble Minister has categorically stated, Section 238 provides that I&B Code will prevail in case of inconsistency between two laws. She also stated, that there was about indemnity for successful applicant and that the amendment was clearly making it binding Government. stated, that She Government will not make any further claim after resolution plan is approved. So, that is going to be a major sense of Finance that question resolution on the the assurance for the people who are using the resolution plan. She has categorically stated, that she would want all the Hon'ble Members and to recognize this message communicate further that I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states, that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company."

34. The Hon?ble Supreme Court in the matter of **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101** in which Section 142A of the Customs Act, 1962 was on issue, wherein authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned in the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. The court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

"55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail, over the Customs Act, and if so, to what extent?

The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

Answered in negative.

35. In a similar manner the Hon'ble Supreme Court in catena of judgements has held that provisions of Section 238 of IB Code will have an overriding effect on the provisions of Electricity Act, 2003 despite the fact that Electricity Act also contain two specific provisions, with non-obsante clause i.e. Section 173 and 174.

36. Similarly, in **Duncans Industries Ltd. A.J. Agorchem, (2019) 9 SCC 725: AIR 2019 Supreme Court 5472, S**ection 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC.

37. Since this issue has already been decided in the matter of **M/s Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407** wherein it has been held that Section 238 of IB Code clearly mandates that the provisions of IB Code shall have effect, notwithstanding anything in consistent therewith contained in any other law for the time being in force. This being a position and considering the mandate laid down in Section 238, which is subsequent law enacted by parliament. The provisions of Section 238 of IBC would have effect. It was further held as under:-

".It is precisely for this reason that the non obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code. For all these reasons.?

This ratio was also followed by the Hon'ble Supreme Court in the matter of **CIT vs. Monnet Ispat and Energy Ltd., (2018) 18 SCC 786.**

38. In the past as well there have been instances of inconsistencies were faced in the application of other statutes due to IBC as was found in M/s Platinum Rent A Car (India) Private Limited vs. M/s Quest Offices, Limited (Company Appeal (AT) (CH) (Ins) No.448 of 2022), wherein it was held that the IB Code is a self contained Code and will have an overriding effect because of Section 238 of the Code and **in K. Kishan vs. Vijay Nirman Company Private Limited, (2018) 17 SCC 662** wherein the court upheld the primacy of IBC through Section 238 against and Arbitration and Conciliation Act of 1996 respectively.

39. The respondents have already participated in the proceedings under the IB Code before the liquidator and had submitted its claim. The liquidator will duly verify and distribute the outstanding amount as per the order for mechanism set up under the IB Code. Since they have

already submitted their claim with the liquidator, the liquidator will definitely decide under the IB Code.

40. Section 238 of Insolvency and Bankruptcy Code, 2016 is a non-obstante clause meaning it grants the IB Code a power of overriding effect on other laws, for the time being in force, or any instrument that is inconsistent with it. This is a Special Section, which ensures that the IBC framework for Insolvency and Bankruptcy resolution or liquidation take precedence over all other laws, establishing this Code has a comprehensive and specific law for its intended purpose.

CONCLUSION

41. It is not in dispute that the respondent PVVPL had already participated in liquidation process and had made their claim with the liquidator, hence, it will not be open for the respondents to recover outstanding dues under the Electricity Act, 2003, specially when IB Code, 2016 has been triggered. It is clear that IB Code, 2016 will have overriding effect over Electricity Act, 2003, hence, the respondents will get their outstanding dues only in the liquidation proceeding. The respondents cannot avail two reliefs at the same time. They have participated in the liquidation proceedings but at the same time pressurizing the petitioner to pay dues of the corporate debtor under the provisions of Electricity Act.

42. A plain reading of Section 238 of IB Code, 2016 clearly shows that it has overriding effect over other Acts. Similar provision is also found in Electricity Act, 2003. Since, IB Code, 2016 is later Act, hence, it will have overriding effect on Electricity Act, 2003.

43. The ratio laid down in **K.C. Ninan's case** (supra) would not be applicable as aforesaid judgement is not in reference to the proceedings initiated under the IB Code, which is a Special Act passed later in time and as per Section 238 of IB Code this being a Special Act will have an overriding effect on the other prevailing Acts.

44. The instant issue has already been decided in the matter of **Southern Power Distribution Company of Telangana vs. Gupal Agrawal & Ors. (supra)** and in **Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd (supra)** wherein it has been categorically held that the provisions of Section 238 of IBC will prevail over and override other provision of the other acts which are in force at the time of framing of this Code and the Power Company cannot deny granting them the connection.

45. The instant issue is also covered by the legal maxim **Lex Posterior Devogat Priori,** which means that in case of conflict between the laws the a later Act would repeal the earlier Act.

46. The newer Acts supersedes the older ones to the extent of in consistency. This reflects the dynamic nature of the legal system allowing it to adapt and evolve with the changing social need and priorities.

47. In case of conflict between two statutes having conflictory provisions and both contain non-obstante clause. Section 238 of IB Code and Section 173 and 174 of Electricity Act, 2003 provide both acts to exercise primary over other laws. The Hon?ble Supreme Court while deciding the issue in **M/s Innoventive Industries Ltd.**

vs. ICICI Bank (supra) had observed that the later Statue (IBC) would prevail over and override the other Statute (Electricity Act).

48. In view of aforesaid facts and discussion, impugned order dated 15th May, 2025 is set aside and the respondents are directed to install power connection in the premises of the petitioner. However, it is open for the respondents to collect its dues from the Liquidator.

49. The writ petition is, accordingly, **allowed.**

(2025) 9 ILRA 1127
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Matters Under Article 227 No. 7409 of 2025

J.B. Motors ...Petitioner
Versus
Smt. Hemlata Kapoor & Ors. ...Respondents

Counsel for the Petitioner:
Sri Shreyas Srivastava

Counsel for the Respondents:
Mrs. Rama Goel Bansal, Ms. Shalini Goel

Issue for Consideration

Whether the Revisional Court, in exercise of powers under Section 25 of the Provincial Small Cause Courts Act, 1887, was justified in setting aside the order of the Judge, Small Cause Court rejecting the application under Order XV Rule 5 C.P.C. and remanding the matter for fresh consideration, when the defendant had categorically denied the landlord–tenant relationship and claimed ownership on the basis of a registered sale deed, and whether such remand order warranted interference under Article 227 of the Constitution of India.

Headnotes

Civil Procedure Code, 1908 — Order XV Rule 5 (U.P. Amendment) — Provincial Small Cause Courts Act, 1887 — ss.23, 25 — Constitution of India — Art.227 — Striking off defence — Discretionary power — Denial of landlord–tenant relationship — Claim of ownership by defendant — Scope of revisional jurisdiction — Remand by Revisional Court — Interference under Article 227 — Order set aside.

Held:

Order XV Rule 5 C.P.C. (U.P. Amendment) confers a **discretionary and not mandatory power** upon the Court to strike off the defence of a tenant for non-deposit of admitted rent. The discretion is required to be exercised judiciously, having regard to the facts and circumstances of each case. [Paras 7–8]

Where the defendant, from the inception, **categorically denies the relationship of landlord and tenant** and claims ownership of the property on the basis of a **registered sale deed**, the Judge, Small Cause Court is required to first examine the seriousness of the title dispute, including the applicability of **Section 23 of the Provincial Small Cause Courts Act**, before exercising power under Order XV Rule 5 C.P.C. [Paras 10–11]

The Judge, Small Cause Court had rejected the application under Order XV Rule 5 C.P.C. after recording a finding that the defendant was claiming ownership of the property and, therefore, could not be compelled to deposit rent. Such exercise of discretion could not be termed perverse or illegal. [Paras 10–11]

The Revisional Court, while exercising jurisdiction under Section 25 of the Act, **exceeded its limited scope** by setting aside the discretionary order of the Judge, Small Cause Court and remanding the matter for fresh consideration, without recording any finding of jurisdictional error, miscarriage of justice, or illegality as contemplated under Section 25 of the Act. [Paras 11–12]

The scope of interference under Section 25 of the Provincial Small Cause Courts Act is confined to cases of miscarriage of justice or decision not according to law. The Revisional Court cannot substitute its own discretion merely because another view is possible. [Para 12]

The impugned revisional order dated 01.05.2025 was held unsustainable and was set aside. The Judge, Small Cause Court was directed to proceed with the suit and decide the pending application under **Section 23 of the Act** in the light of settled law. [Paras 13–14]

Petition allowed. (E-14)

Case Law Cited

Asha Rani Gupta v. Vineet Kumar, 2022 LiveLaw (SC) 607 — *relied on*; Bhure Khan Warsi v. Mohd. Israr, 2024 (1) ADJ 1440 (DB) — *relied on;* Jugeshwar Prasad v. Hanuman Prasad, 2025:AHC-LKO:28022 — *relied on;* Hari Shankar v. Rao Girdhari Lal Chowdhary, AIR 1963 SC 698 — *relied on*.

List of Acts / Statutes

Code of Civil Procedure, 1908; Provincial Small Cause Courts Act, 1887

List of Keywords

Striking off defence; Discretionary power; Denial of landlord–tenant relationship; Ownership claim; Registered sale deed; Revisional jurisdiction; Remand order set aside.

Case Arising From

Order dated **01.05.2025** passed by the Additional District Judge, Court No. 8, Bareilly in **S.C.C. Revision No. 28 of 2023** (Smt. Hemlata Kapoor and Others v. J.B. Motors), arising out of **S.C.C. Suit No. 3 of 2016**, pending before the Judge, Small Cause Court, Bareilly.

Appearance for Parties

For the Petitioner: Mr. Shreyas Srivastava
For the Respondents: Ms. Rama Goel Bansal, Ms. Shalini Goel

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

1. Heard Mr. Shreyas Srivastava, learned counsel for the petitioner-defendant and Mrs. Rama Goel Bansal along with Ms. Shailini Goel, learned counsel appearing for the respondents-plaintiffs.

2. Brief facts of the case are that respondents-plaintiffs have instituted a Small Cause Suit No.3 of 2016 before the Judge, Small Cause Court, claiming themselves to be the landlord of the property in question. The respondents-plaintiffs are claiming their title through Mr. Harish Chandra Kapoor, the late husband of respondent no.1 and late father of respondent no.2. The property in question is part and parcel of a huge portion of land situated at 189, Civil Lines, District Bareilly. One S.C.C. Suit No. 4 of 2020 was instituted by one Mr. Darab Shah in the court of Judge, Small Cause Court, District Bareilly, impleading Sri Anoop Chaddha as the opposite party which was decided on the basis of compromise. In S.C.C. Suit No.3 of 2016, original petitioner-defendant (J.B. Motors) put in appearance and filed application under Order 11 Rule 16 of the Civil Procedure Code (for short "C.P.C."), seeking production of document / title by original plaintiffs-respondents before the Judge, Small Cause Court. The petitioner/defendant filed his written statement, denying the ownership of the plaintiffs-respondents in respect to the property in question. Replication was filed on 8.3.2022 by the plaintiffs-respondents. Plaintiffs-respondents filed an application dated 20.2.2023 (paper no.67C) under Order 15 Rule 5 of the C.P.C., praying for striking off the defendant's-petitioner's defence. The petitioner-defendant filed his objection dated 17.3.2023 to the application under Order 15 Rule 5 of the C.P.C. The petitioner-defendant also filed an

application under Section 23 of the Provincial Small Cause Court Act, 1887 (for short the "Act"). The plaintiffs-respondents filed their objection to the application filed by the petitioner-defendant under Section 23 of the Act and the Judge, Small Cause Court Act vide order dated 19.4.2023 dismissed the application filed by the plaintiffs-respondents, recording finding of fact that defendants are the owner of the property in question, as such, they cannot be accepted to pay the rent of the accommodation/property in question. The plaintiffs-respondents challenged the order of the Judge, Small Cause Court dated 19.4.2023 by way of revision under Section 25 of the Act. The aforementioned revision was numbered as S.C.C. Revision No.28 of 2023. The revisional court vide impugned order dated 1.5.2025, set aside the order of the Judge, Small Cause Court dated 19.4.2023 and remanded the matter back before the Judge, Small Cause Court for fresh consideration of the application under Order 15 Rule 5 of the C.P.C. Hence, this petition under Article 227 of the Constitution of India for the following reliefs:-

"1. Issue appropriate orders, setting aside the order dated 1.5.2025 passed by the Addl. District Judge, Court No.8, District Bareilly in S.C.C. Revision No.28/2023 (Hemlata Kapoor and Others vs. J.B. Motors)

2. Issue appropriate orders, directing the Judge, Small Cause Court, District Bareilly, seized with S.C.C. Suit No.3/2016 (Hemlata Kapoor and Others vs. J.B. Motors) to decide the application (paper no.83 ga) under Section 23 of the Provincial Small Cause Court Act, 1887 (Annexure No.13 to the petition), before proceeding any further with the suit."

3. Counsel for the petitioner-defendant submitted that the Judge, Small Cause Court has rightly exercised his jurisdiction in rejecting the application filed under Order 15 Rule 5 of the C.P.C. at the instance of plaintiffs-respondents but the revisional court has illegally set aside the order of the Judge, Small Cause Court and remanded the matter back to decide the application under Order 15 Rule 5 of the C.P.C. afresh. He submitted that the petitioner is the owner of the property in question which is the subject matter of S.C.C. Suit No.3/2016 on the basis of registered sale deed dated 2.9.2011 executed by Mr. Darab Shah and Others. He submitted that the plaintiffs-respondents are claiming title through Mr. Harsh Chandra Kapoor who was the power of attorney holder of Mr. Darab Shah and Others, as such, the plaintiffs-respondents cannot be treated as the owner of the property in question. He submitted that the provision of striking of the defence under Order 15 Rule 5 of the C.P.C. is discretionary and directory in nature, as such, the jurisdiction exercised by Judge, Small Cause Court in rejecting the application under Order 15 Rule 5 of the C.P.C. cannot be interfered with by the revisional court in exercise of jurisdiction under Section 25 of the Act. He submitted that the plaintiffs-respondents in their plaint, have categorically stated that rent was being paid to Mr. Darab Shah till 31.3.2011, i.e., before execution of registered sale deed dated 2.9.2011, as such, the plaintiffs-respondents cannot become owner/landlord of the property in question in view of the registered sale deed executed in favour of the petitioner-defendant. He submitted that the impugned revisional order should be set aside and the order passed by the Judge, Smal Cause Court, rejecting the application under Order 15 Rule 5 of the C.P.C. filed by plaintiffs-respondents should be maintained. He

placed reliance on the following judgments of Hon'ble the Apex Court and that of this Court in support of his arguments:-

"1. 2022 Live Law (SC) 607 Asha Rani Gupta vs. Sri Vineet Kumar;

2. 2024 (1) ADJ 1440, Bhure Khan Warsi vs. Mohd. Israr;

3. 2025:AHC-LKO: 28022, Jugeshwar Prasad vs. Hanuman Prasad."

4. Counsel appearing for the plaintiffs-respondents submitted that the order passed by the Judge Small Cause Court is not a reasoned order, as such, the revisional court has rightly exercised his revisional jurisdiction in setting aside the order of the Judge, Small Cause Court dated 19.4.2023 and directing the Judge, Small Cause Court to decide the application under Order 15 Rule 5 of the C.P.C. afresh. She submitted that the petitioner-defendant has full opportunity to contest the application filed under Order 15 Rule 5 of the C.P.C. before the Judge, Small Cause Court rather instant petition before this Court under Article 227 of the Constitution of India. She submitted that in view of the provisions contained under Order 15 Rule 5 of the C.P.C., the courts should exercise the jurisdiction in proper manner. She also submitted that the Judge, Small Cause Court has not assigned proper reason while passing the order dated 19.4.2023, rejecting the application filed under Order 15 Rule 5 of the C.P.C., as such, no interference is required against the remand order passed by the revisional court by which the matter has been sent back before the Judge, Small Cause Court to decide the application filed under Order 15 Rule 5 of the C.P.C. afresh. She submitted that the petition filed under Article 227 of the Constitution of India by the petitioner-defendant should be dismissed.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact S.C.C. Suit No.3 of 2016 filed by plaintiffs-respondents is pending for adjudication before the Judge, Small Cause Court. There is also no dispute about the fact that application under Order 15 Rule 5 of the C.P.C. filed by the plaintiffs-respondents has been dismissed under the order dated 19.4.2023. There is also no dispute about the fact that the revision filed by the plaintiffs-respondents has been allowed, setting aside the order of the Judge, Small Cause Court dated 19.4.2023 and the matter has been sent back before the Judge, Small Cause Court to decide the application under Order 15 Rule 15 C.P.C. afresh.

7. In order to appreciate the controversy involved in the matter, perusal of Order 15 Rule 5 of the C.P.C. will be relevant which is as under:-

"Uttar Pradesh.— In its application to the State of Uttar Pradesh, in Order XV, for the existing Rule 51, the following rule shall be substituted, namely: —

"5. Striking off defence on failure to deposit admitted rent, etc. —

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first

hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making, the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1. — The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2. — The expression 'entire amount admitted by him to be due' means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account *[and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him] and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3. — (1) The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same." [Vide U.P. Act 57 of 1976, Section 7 (1-1-1977)]"

8. On the scope of Order 15 Rule 5 C.P.C., the judgment of the Apex Court in the case of Asha Rani Gupta (supra) will be relevant. Paragraph nos.11 to 16 of the judgment rendered in Asha Rani Gupta (supra) will be relevant for perusal which are as under:-

11. The present suit has been filed by the plaintiff-appellant claiming her capacity as the lessor after having

purchased the suit property from its erstwhile owner. According to the plaintiff, the defendant has been the lessee in the suit shop and his lease was determined; and while alleging the rent to be due and having not been paid despite demand, the plaintiff has filed this suit for eviction and recovery of arrears of rent and damages for use and occupation. Having regard to the plaint averments, the suit in question is clearly the one to which the provisions of Order XV Rule 5 CPC are applicable.

11.1. Though the aforesaid decisions in cases of Miss Santosh Mehta, Smt. Kamla Devi and Manik Lal Majumdar related to the respective rent control legislations applicable to the respective jurisdictions, which may not be of direct application to the present case but and yet, the relevant propositions to be culled out for the present purpose are that any such provision depriving the tenant of defence because of default in payment of the due amount of rent/arrears have been construed liberally; and the expression 'may' in regard to the power of the Court to strike out defence has been construed as directory and not mandatory. In other words, the Courts have leaned in favour of not assigning a mandatory character to such provisions of drastic consequence and have held that a discretion is indeed reserved with the Court concerned whether to penalise the tenant or not. However, and even while reserving such discretion, this Court has recognised the use of such discretion against the defendant-tenant in case of wilful failure or deliberate default or volitional non-performance. This Court has also explained the principles in different expressions by observing that if the mood of defiance or gross neglect is discerned, the tenant may forfeit his right to be heard in defence. The sum and substance of the matter is that the power to strike off defence is considered to be discretionary, which is to be exercised with circumspection but, relaxation is reserved for a bonafide tenant like those in the cases of Miss Santosh Mehta and Smt. Kamla Devi (supra) and not as a matter of course. The case of Bimal Chand Jain (supra) directly related with Order XV Rule 5 CPC where the tenant had deposited the arrears admitted to be due but, failed to make regular deposits of monthly rent and failed to submit representation in terms of sub-rule (2) of Rule 5 of Order XV. The defence was struck off in that matter with the Trial Court and the High Court taking the said provisions of Order XV Rule 5 CPC as being mandatory in character. Such an approach was not approved by this Court while indicating the reserve of discretion in not striking off defence if, on the facts and circumstances existing on record, there be good reason for not doing so. The common thread running through the aforesaid decisions of this Court is that the power to strike off the defence is held to be a matter of discretion where, despite default, defence may not be struck off, for some good and adequate reason.

11.2. The question of good and adequate reason for not striking off the defence despite default would directly relate with such facts, factors and circumstances where full and punctual compliance had not been made for any bonafide cause, as contradistinguished from an approach of defiance or volitional/elective non-performance.

12. Reverting to the provisions under consideration, it is noticed that while the first part of sub-rule (1) of Rule 5 of Order XV CPC requires deposit of the admitted due amount of rent together with interest, the second part thereof mandates that whether or not the tenant admits the amount to be due, he has to, throughout the continuation of the suit, regularly deposit monthly amount due within a week from the date of its accrual. Read as a whole, it is but clear that Order XV Rule 5 CPC embodies the fundamental principle that there is no holidaying for a tenant in payment of rent or damages for use and occupation, whether the lease is subsisting or it has been determined. The only basic requirement in the suit of the nature envisaged by Order XV Rule 5 CPC is the character of defendant as being the lessee/tenant in the suit premises. Viewed from this angle, we are not inclined to accept the line of thought in some of the decisions of the High Court that in every case of denial of relationship of landlord and tenant, the defendant in suit for eviction and recovery of rent/damages could enjoy holidays as regards payment of rent.

12.1. For what has been discussed hereinabove, the decision of the High Court in Ladly Prasad (supra) does not require much dilation when it remains indisputable that it is not always obligatory on the Court to strike off the defence. However, the said decision cannot be read to mean that despite default of the tenant in payment of rent, the defence has to be permitted irrespective of its baselessness. The decision in Kunwar Baldevji (supra), again, would have no application to the facts of the present case. Herein, the defendant-respondent has not only omitted to deposit the rent on the first date of the hearing but, has also omitted to deposit the accrued rent during the pendency of the suit.

13. In a suit of the present nature, where the defendant otherwise has not denied his status as being the lessee, it was rather imperative for him to have scrupulously complied with the requirements of law and to have deposited the arrears of rent due together with interest on or before the first date of hearing and in any case, as per the second part of sub-rule (1) of Rule 5 of Order XV CPC, he was under the specific obligation to make regular deposit of the monthly amount due, whether he was admitting any such dues or not.

14. In the context of the proposition of denial of title of the plaintiff and denial of relationship of landlord and tenant between the plaintiff and defendant, we may also observe that such a denial simpliciter does not and cannot absolve the lessee/tenant to deposit the due amount of rent/damages for use and occupation, unless he could show having made such payment in a lawful and bonafide manner. Of course, the question of bonafide is a question of fact, to be determined in every case with reference to its facts but, it cannot be laid down as a general proposition that by merely denying the title of plaintiff or relationship of landlord- tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the amount of rent/damages.

15. Taking the facts of the present case, it is at once clear that the defendant-respondent, by his assertions and conduct, has left nothing to doubt that he has been steadfast in not making

payment of rent/damages, despite being lessee of the suit shop. The present one has clearly been the case of volitional non-performance with nothing left to guess about the defendant's mood of defiance. Nothing of any fact or any circumstance is existing on record to find even a remote reason for extending any latitude or relaxation in operation of Order XV Rule 5 CPC to the present case. It shall be apposite at this juncture to also observe that the contentions on behalf of the defendant-respondent to the effect that he had made payment of rent to the alleged erstwhile landlord Smt. Sudha Sharma and contra submissions on behalf of the appellant that even in the year 1990, the defendant-respondent admitted the said Shri Rajiv Kant Sharma as the owner of the property as also the factors co-related with these submissions, do not call for adjudication in this appeal. This is for two simple reasons: One, that so far as the fact of volitional non-performance by the defendant-respondent is concerned, with no cogent evidence of lawful payment of rent, the findings of fact by the Trial Court and the Revisional Court against the defendant-respondent stand final and have not been disturbed even by the High Court. There appears no reason for this Court to enter into any factual inquiry as regards payment of rent to Smt. Sudha Sharma or otherwise, now in this appeal. Secondly, so far as any affidavit filed by the defendant-respondent in the year 1990, allegedly admitting Shri Rajiv Kant Sharma as owner of property is concerned, it may be a matter of adjudication by the Trial Court but would not be a matter of consideration in this appeal. Suffice it to observe that the present one is a case very near and akin to that of Hisamul Islam Siddiqui (supra) wherein, the learned Single Judge of the same High Court has approved the order striking off the defence after finding want of deposit of the amount of rent, despite the defendant having not denied his status as tenant.

16. In the totality of facts and circumstances, we are clearly of the view that there was absolutely no reason for the High Court to have interfered in the present case, where the Trial Court had struck off the defence after finding that there was no evidence on record to show the payment or deposit of rent in favour of the plaintiff by the defendant-respondent. The Revisional Court had also approved the order of the Trial Court on relevant considerations. Even the High Court did not find the pleas taken by the defendant-respondent to be of bonafide character, particularly when survey number of the shop let out to him was clearly stated in the sale deed executed in favour of the plaintiff. We find it rather intriguing that, despite having not found any cogent reason for which discretion under Rule 5 of Order XV CPC could have been exercised in favour of the defendant-respondent, the High Court, in the last line of paragraph 45 of the order impugned, abruptly stated its conclusion that" 'yet the defendant/tenant deserves some indulgence'.

9. In the Division Bench matter of this Court reported in **2024 (1) ADJ 1440, Bhure Khan Warsi vs. Mohd. Israr,** the reference made by the Single Judge in case of disputing the landlord-tenant relationship by defendant upon the application under Order 15 Rule 5 C.P.C.,

the reference has been answered by Division Bench in paragraph no.31 of the judgment which is as under:-

31. Ultimately, this Court answers the reference in the following manner :

(I) In a suit for eviction, on the determination of lease if the lessee admits that there was rent due then at or before the first hearing of the suit he shall pay the entire admitted amount along with interest thereon at the rate of 9% per annum.

(ii) If he does not admit any amount to be due then he would throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual.

(iii) Default of the above two would give the Court a right to strike off the defence, subject to the provisions of sub-rule (2) of Order XV Rule 5 of the C.P.C. which gives the defendant an opportunity to represent within ten days from the first hearing.

(iv) As per the explanation-II of Order XV Rule 2 C.P.C., the entire amount admitted by the defendant-lessee has to be construed as the entire gross amount whether as rent or compensation for use and occupation, calculated at the "admitted rate of rent" for the admitted period.

(v) The monthly amount due which had to be paid within one week after the monthly amount payable became due was also to be paid at the "admitted rate of rent".

(vi) The law, as had been laid down in paragraph no.11 of Pradyuman Jee vs. Special/Additional District Judge, Ballia reported in 2008 (71) ALR 892 which had stated that if the defendant denies the existence of the landlord-tenant relationship then he may not be required to deposit the amount admitted to be due at or before the first hearing of the suit but he would still be required to deposit the monthly amount due, is not a correct law. Order XV Rule 5 of C.P.C. does not talk about the denial of the landlord-tenant relationship. It only talks about "admitted rent".

(vii) As per the judgment of Kunwar Baldevji and etc. vs. The XI Additional District Judge, Bulandshahr & Ors. reported in (2003) 51 ALR 758 if the amount of rent is not admitted then it is required to be adjudicated by the Court. In case, the tenant/defendant denies any rent to be due, the Court would be required to decide the same. Obviously then the Court will have to adjudicate and arrive at a finding at the first date of hearing contemplated under Order XV Rule 5 CPC as to what is the rent and what is payable. This issue has to be framed and thereafter adjudicated upon on the leading of evidence of the parties.

(viii) If the tenant-defendant denies the relationship of landlord-tenant then as per the judgment of the Supreme Court in Asha Rani Gupta vs. Vineet Kumar reported in (2022) 8 ADJ 572 (SC) and as per the provisions of section 23 of the Provincial Small Cause Courts Act, 1887, the Court will have to determine whether the question raised by the defendant with regard to title of the plaintiff was a serious one or whether

the denial of the title was a question which was to be determined with the help of evidence which would be led by the parties. If the denial was a definite denial with substantial evidence then the Court of Small Causes, which did not have the jurisdiction/authority to determine the title of the plaintiff, would have the discretion to return the plaint at any stage of the proceedings to be presented before the Court having jurisdiction to determine the title.

10. It is material to mention that in the instant matter the Small Cause Suit No.3 of 2016 has been filed in the year 2016 by the plaintiff-respondents. Petitioner-defendant has denied from very beginning that plaintiffs-respondents are not the landlord-owner of the property in question rather the petitioner-defendant is the owner of the property in question on the basis of registered sale deed. The application 67 Ga filed under Order 15 Rule 5 of the C.P.C. dated 20.1.2023 for striking off the defence of the defendant has been rejected by the Judge, Small Causes, recording finding that the application filed under Order 15 Rule 5 of the C.P.C. cannot be allowed in view of the fact that petitioner-defendant is claiming himself to be the owner on the basis of the registered sale deed.

11. The revisional court in exercise of his revisional jurisdiction has set aside the order of the Judge, Small Cause Court and again sent the matter back before the Judge, Small Causes to decide the application filed under Order 15 Rule 5 of the C.P.C. afresh which is not sustainable in the eye of law, as such, the order dated 1.5.2025 passed by the revisional court is liable to be set aside.

12. So far as the scope of Section 25 of Provincial Small Cause Court Act is concerned, the perusal of paragraph no.12 of the judgment of Hon'ble Apex Court, reported in **1963 AIR SC 698,** Hari Shankar vs. Rao Girdhari Lal Chowdhary will be relevant which is as under:-

"The section we are dealing with, is almost the same as S. 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in Bell & Co. Ltd. v. Waman Hemraj (1) where the learned Chief Justice, dealing with s. 25 of the Provincial Small Cause Courts Act, observed:

"The object of s. 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does s.115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which

made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

13. Considering the facts and circumstances of the case, the impugned revisional order dated 1.5.2025, passed by the Additional District Judge, Court No.8, District Bareilly in S.C.C. Revision No.28/2023 (Hemlata Kapoor and Others vs. J.B. Motors) is liable to be set aside and the same is hereby set aside.

14. **The petition is allowed.** The Judge, Small Causes is directed to decide the S.C.C. Suit No.3 of 2016, considering the pending application under Section 23 of the Act in the light of the ratio of law laid down by the Division Bench of this Court in **Bhure Khan Warsi** (supra) expeditiously, preferably within a period of 6 months from the date of production of the certified copy of the order, in accordance with law.

(2025) 9 ILRA 1137
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.09.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Cancellation Application No. 67 of 2025

Shashank Sharma ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Sandeep Mishra, Vishvendra Singh

Counsel for the Opposite Parties:
Ankit Srivastava, Ch. Dil Nisar, G.A.

ISSUE FOR CONSIDERATION

Whether the bail granted to accused-opposite party no. 2 by the Additional Sessions Judge, Ghaziabad should be cancelled on grounds of improper consideration of facts and gravity of allegations.

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections – 439, - Indian Penal Code (IPC) - Sections - 34, 120-B, 147, 323, 342, 386, 411, 504, 506- Bail cancellation application - filed by informant – seeking cancellation of the Bail granted to the accused opposite party no. 2 – passed by the Additional Sessions Judge - Applicant pleaded that recovery of rupees 8 lakhs from accused and his role as main accused was ignored - Sessions Judge allegedly granted bail casually, without considering seriousness of charges - Opposite party argued that bail cancellation requires proof of misuse of liberty, violation of conditions, or fraud in obtaining bail - Court finds that recovery not supported by independent witnesses – observations in the bail order were narration of FIR allegations, not findings, opposite party no.2 has not been granted bail on the ground of parity - held, No evidence of misuse of bail, threats, or tampering with evidence - hence, Bail cancellation application is rejected. (Para – 7, 8, 9)

Application Allowed. (E-11)

CASE LAW CITED

Ajwar Vs. Waseem and Another, 2024 (10) SCC 768,

Himanshu Sharma Vs. State of Madhya Pradesh, 2024 (4) SCC 222.

LIST OF ACTS

Indian Penal Code (IPC) - Code of Criminal Procedure.

LIST OF KEYWORDS

Bail cancellation - Recovery - Main accused - Parity in bail - Independent witness - Misuse of liberty - Rioting - Voluntarily causing hurt - Intentional insult - Criminal intimidation - Wrongful confinement - Extortion by putting in fear of death or grievous hurt - Criminal conspiracy.

CASE ARISING FROM

(i) Case Crime No. 803 of 2023, under Sections 147, 323, 504, 506, 342, 386, 120-B, 411, 34 IPC, Police Station Nandgram, District Ghaziabad - **(ii)** Bail granted in **Criminal Misc. Bail Application No. 7139 of 2024** (Ishant Tyagi @ Vasu Tyagi Vs. State of U.P.) on 01.01.2025 - **(iii)** Bail cancellation application filed as **BAILC No. 67 of 2025**.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sandeep Mishra, Shri Vishvendra Singh,
Counsel for Respondent(s): Shri V.P. Srivastava, Senior Counsel, Assisted by Ch. Dil Nisar, Shri Chandan Singh, A.G.A.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. Heard Sri Sandeep Mishra alongwith Sri Vishvendra Singh learned counsel for the informant-applicant, Sri V.P.Srivastava, learned Senior Counsel assisted by Ch. Dil Nisar, learned counsel for the opposite party no.2 Sri Chandan Singh, learned A.G.A. for the State, and perused the material on record.

2. The instant bail cancellation application has been moved on behalf of the informant seeking cancellation of the bail granted to the accused-opposite party no.2 vide order dated 01.01.2025, passed by learned Additional Sessions Judge, Court No.6, District Ghaziabad in Criminal Misc. Bail Application No. 7139 of 2024 (Ishant Tyagi @ Vasu Tyagi Vs. State of U.P.) in Case Crime No. 803 of 2023 under Sections 147, 323, 504, 506, 342, 386, 120-B, 411, 34 I.P.C., Police Station Nandgram, District Ghaziabad.

3. Learned counsel for the applicant-informant submits that concerned Sessions Judge, Ghaziabad, in spite of making specific observation in its bail order dated 01.01.2025 to the effect that the recovery of Rs. 8 lacs has been made from the possession of the opposite party no. 2 and he is the main accused, has granted bail to the opposite party no. 2 merely on the ground that all the accused persons have been granted bail. Learned counsel further argued that the accused persons, who have been enlarged on bail were not named in the F.I.R. and from their possession nothing had been recovered. Learned counsel further argued that the opposite party no.2 is the main accused, as has also been observed by the learned Sessions Judge, and that recovery has been made from his possession to the tune of Rs. 8 lacs. He further submits that the learned Sessions Judge, Ghaziabad in a very casual manner, without considering the gravity of allegation, granted bail to the accused opposite party no.2. Therefore, the order passed by the learned Sessions Judge may be set aside. In support of his submissions, learned counsel has placed reliance upon paragraph nos. 26, 27, 28, 29 of a decision of the Hon'ble Apex Court in ***Ajwar Vs. Waseem and another, 2024 (10) SCC 768.*** Those paragraphs read as below:-

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence,

the Court must consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer: Chaman Lal v. State of U.P. and Another (2004) 7 SCC 525; Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another(supra); Masroor v. State of Uttar Pradesh and Another (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh and Another (2014)16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) and Another (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia and Another(supra).

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.. In P v. State of Madhya Pradesh and Another(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

28. The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case

needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

29. In Jagjeet Singh (supra), a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr.P.C is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (Also refer: Puran v. Ram Bilas and Another (2001) 6 SCC 338); Narendra K. Amin (Dr.) v. State of Gujarat and Another (2008) 13 SCC 584.

(emphasis supplied)

4. Learned counsel for the applicant-informant thus argued that the learned Sessions Judge, Ghaziabad while granting bail to the accused-opposite party no.2 did not consider the parameters for granting bail to the accused-opposite party no.2 and in a very cursory and routine manner granted bail to the accused-opposite party no.2, therefore the bail order is liable to be set aside and the bail granted to the accused-opposite party no.2 is liable to be cancelled.

5. On the other hand, Sri V.P.Srivastava, learned Senior Counsel assisted by Ch.Dil Nisar, learned counsel for the opposite party no. 2 submits that after considering the entire facts and circumstances of the case in its entirety, the learned Court of Sessions, Ghaziabad granted bail to the accused-opposite party no.2. Learned counsel further submits that in catena of judgement Hon'ble Apex Court has held that consideration of bail and cancellation thereof are entirely different and bail granted to the accused can only be cancelled, if the Court is satisfied that after being released on bail, the accused has misused the liberty of bail; flouted the conditions of bail order; that the bail granted was in ignorance of statutory provisions restricting the powers of the Court to grant bail; and that the bail was procured by misrepresentation or fraud, whereas in the present case none of such situation occurred. So far as the submission of learned counsel for the applicant, that the learned Court of Sessions while granting bail to the accused-opposite party no.2 has specifically observed that recovery of Rs. 8 lacs has been made from the possession of the opposite party no.2 and he is the main accused and that all the accused persons have been granted bail, is concerned, learned counsel further submits that the alleged recovery is not supported by any independent witness. The learned court below observed that from a perusal of the FIR, the opposite party no. 2 appears to be the main accused when as a matter of fact, there is no such findings that the opposite party no.2 is the main accused. Furthermore the opposite party no. 2 has not been granted bail on the ground of parity and therefore the submissions advanced by learned counsel for the applicant has no force. In support of his submissions, learned counsel has placed

reliance upon paragraph no. 11 of the decision of Hon'ble Apex Court in ***Himanshu Sharma Vs. State of Madhya Pradesh, 2024 (4) SCC 222,*** which is quoted below:-

"11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

(a) the accused has misused the liberty granted to him;

(b) flouted the conditions of bail order;

(c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;

(d) or that the bail was procured by misrepresentation or fraud.

In the present case, none of these situations existed."

6. Learned Senior Counsel thus argued that the order passed by learned Court of Sessions, by which the accused-opposite party no.2 has been granted bail is perfectly legal, just and proper, which calls for no interference by this Court and therefore the instant bail cancellation application is liable to be rejected.

7. The main thrust, for cancellation of the bail granted to the opposite party no.2, of learned counsel for the applicant is upon paragraph no.10 of the bail order dated 01.01.2025, which is quoted below:-

"10. अभियोग दैनिकी के अवलोकन से विदित होता है कि पुलिस के द्वारा इस अभियुक्त को सहारनपुर से वारण्ट बी पर अभिरक्षा में लिया गया है । इसके द्वारा आठ लाख रुपये की बरामदगी करायी गयी है। प्रथम सूचना रिपोर्ट के अवलोकन से विदित होता है कि यह इस प्रकरण का मुख्य अभियुक्त है। इस अभियुक्त का कथन है कि इसके एवं वादी मुकदमा की पुरानी जानपहचान है। जिसके संबंध में साक्ष्य प्रस्तुत किये गये है। जिस पर अभियोजन की ओर से कोई कथन नहीं आया है। इस अभियुक्त के द्वारा अपने मुकदमा धारा 307 भा0 दं0 स0 के निर्णय की प्रति प्रस्तुत की गयी है, जिसमें उसे दोषमुक्त कर दिया गया है। अभियोजन की ओर से कोई अन्य आपराधिक इतिहास प्रस्तुत नहीं किया गया है। इस प्रकरण में आरोप पत्र प्राप्त हो चुका है एवं लगभग समस्त अभियुक्तगण की जमानत इस न्यायालय अथवा माननीय उच्च न्यायालय से स्वीकार हो चुकी है। इस अभियुक्त के पास से किसी भी हथियार की बरामदगी नहीं हुयी है। समस्त धाराएं मजिस्ट्रेट न्यायालय द्वारा परीक्षणीय हैं।"

8. So far as recovery of Rs. 8 lacs is concerned, the same is not supported by any independent witness, whereas the observation made by learned Sessions Court that "प्रथम सूचना रिपोर्ट के अवलोकन से विदित होता है कि यह इस प्रकरण का मुख्य अभियुक्त है ।" is not a finding recorded by the learned Sessions Court, but a narration of the FIR allegation, according to which the opposite party no. 2 appears to be the main accused. Furthermore the observation "लगभग समस्त अभियुक्तगण की जमानत इस न्यायालय अथवा माननीय उच्च न्यायालय से स्वीकार हो चुकी है। " that is only a fact noted by the learned Sessions Judge and the opposite party no. 2 has not been granted bail on the ground of parity. Thus the arguments advanced by learned counsel for the applicant has no force and reliance of learned counsel for the applicant upon paragraph nos. 26 and 27 of the judgement rendered in the matter of **Ajwar (supra)** does not come to the aid of the applicant, in the present case. So far as paragraph no. 28 of the aforesaid judgement is concerned that pertains to consideration for setting aside the bail order with respect to the conduct of accused while on bail any

attempt on the part of accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses or tampering with the evidence in any manner, which has also not been pointed out by learned counsel for the applicant. In **Ajwar (supra),** the Hon'ble Apex Court has observed that the Courts may remain cautious while granting bail to the accused and avoid making such detailed reasoning as may prejudice the accused and only prima facie case has to be seen at the stage of bail. Besides the fact that the offence alleged is triable by Magistrate, none of the grounds enumerated in the above mentioned decision of the Hon'ble Apex Court for considering cancellation of bail granted is available, in the present facts, therefore, in the opinion of the Court, learned counsel for the applicant could not point out any good ground for cancelling the bail granted to the opposite party no.2 vide order dated 01.01.2025, passed by learned Additional Sessions Judge, Court No.6, District Ghaziabad.

9. Accordingly, the bail cancellation application lacks merit and is **rejected**.

(2025) 9 ILRA 1142
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 1110 of 2025

Jibrail @ Baba ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Priyanka Yadav, Rizwanul Haque Ansari, Santi

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether the applicant can be granted anticipatory bail when the only evidence against him is the statement of a co-accused in custody.

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 482, - Bharatiya Nyaya Sanhita (BNS), 2023 – Sections – 305(A), 331(4), 317(2) - Criminal Procedure Code, 1973 – Sections 438- Anticipatory Bail Application - filed under Section 482 B.N.S.S. by the applicant - FIR – offence of theft of Rs. 17000/- and jewellery - Applicant implicated solely on co-accused's custodial statement - Sessions Judge rejected anticipatory bail relying on *Pradeep Sharma (2014)* and *Iddu v. State of U.P. (2023)* - Court held that constitutional bench rulings (*Sibbia*, *Sushila Aggarwal*) prevail over smaller bench decisions -Anticipatory bail is not exceptional but a recognized remedy - Applicant entitled to anticipatory bail subject to conditions. (Para – 13, 14, 16)

Application Allowed. (E-11)

CASE LAW CITED

1. Iddu & Others v. State of U.P. & Others (2023)
2. State of M.P. v. Pradeep Sharma (2014) 2 SCC 171
3. Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565 (Constitution Bench)
4. Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1 (Constitution Bench)

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 - Bharatiya Nyaya Sanhita (BNS), 2023 - Criminal Procedure Code, 1973.

LIST OF KEYWORDS

Anticipatory Bail - Co-accused Statement - Constitutional Bench - False Implication - Regular Bail - Lakhimpur Kheri - Bail Conditions.

CASE ARISING FROM

Case Crime No. 256/2025 - Police Station: Padhua, District Lakhimpur Kheri.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Ms. Priyanka Yadav, Rizwanul Haque Ansari, Santi.
Counsel for Respondent(s): Mr. Abhay Kumar Singh (Addl. Govt. Advocate), G.A.

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

1. प्रार्थी के विद्वान अधिवक्ता सुश्री प्रियंका यादव तथा विद्वान अपर शासकीय अधिवक्ता श्री अभय कुमार सिंह को सुना तथा पत्रावली का अवलोकन किया।

2. धारा 482 भारतीय नागरिक सुरक्षा संहिता, 2023 के अंतर्गत प्रस्तुत प्रार्थना-पत्र द्वारा प्रार्थी ने मुकदमा अपराध संख्या 256 वर्ष 2025 अन्तर्गत धारा 305 (A), 331 (4), 317 (2) भारतीय न्याय संहिता थाना पढुआ जिला लखीमपुर खीरी में अग्रिम जमानत की प्रार्थना की है।

3. दिनांक 22.05.2025 को लिखाई गई प्रथम सूचना रिपोर्ट में यह कहा गया है कि दिनांक 20.05.2025 की मध्य रात्रि शिकायतकर्ती के घर में चोरी हुई जिसमें सत्रह हजार रुपये तथा कुछ गहने चोरी हो गए।

4. प्रार्थना-पत्र के साथ प्रस्तुत शपथ-पत्र में कहा गया कि प्रार्थी निर्दोष है और उसका कोई आपराधिक इतिहास नहीं है। साथ ही एक पूरक शपथ-पत्र के माध्यम से दो अन्य प्रकरण में प्रार्थी की संलिप्तता दर्शायी गई है, जिन दोनों में प्रार्थी को जमानत पर रिहा किए जाने का आदेश हो चुका है।

5. प्रार्थी के विद्वान अधिवक्ता ने तर्क दिया कि मात्र आपराधिक इतिहास होने के कारण प्रकरण में पुलिस प्रार्थी की गिरफ्तार करने की चेष्टा कर रही है, जबकि प्रार्थी प्रश्नगत प्रकरण में संलिप्त नहीं है।

6. विद्वान अपर शासकीय अधिवक्ता ने उनको प्राप्त अनुदेशों के आधार पर प्रार्थना-पत्र का विरोध किया। विद्वान अपर शासकीय अधिवक्ता ने केस डायरी के संलग्नक न्यायालय के समक्ष रखे, जिसके अनुसार पुलिस ने दो अभियुक्तों गुलाम एवं रिजवान को मुखबिर खास से प्राप्त सूचना के आधार पर गिरफ्तार किया तथा उनसे कुछ वस्तुओं बरामद की है। रिजवान ने यह बताया कि उससे बरामद रुपया उसने गुलाम एवं जिब्राइल उर्फ बाबा (प्रार्थी) के साथ मिलकर चुराया था।

7. उपरोक्त तथ्यों से यह स्पष्ट है कि सह-अभियुक्त के अभिरक्षा में दिए गए बयान के अतिरिक्त प्रार्थी के विरुद्ध कोई सामग्री नहीं है।

8. अपर सत्र न्यायाधीश, कक्ष सं०-5, लखीमपुर-खीरी ने प्रार्थी की अग्रिम जमानत प्रार्थना-पत्र को आदेश दिनांक 30.07.2025 द्वारा निरस्त कर दिया जिसमें **इहु एवं अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य** में अग्रिम जमानत प्रार्थना-पत्र संख्या 10145 वर्ष 2023 में पारित निर्णय का आश्रय लिया जिसमें यह सिद्धांत प्रतिपादित किया गया है कि अग्रिम जमानत का उपचार वहीं प्रदान किया जा सकता है जहां अभियुक्त की प्रश्नगत मामले में संलिप्तता का लेश मात्र भी साक्ष्य न हो। इहु एवं अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य के प्रकरण में इस न्यायालय ने अग्रिम जमानत प्रार्थना-पत्र इन तथ्यों को ध्यान में रखते हुए निरस्त कर दिया था कि शिकायतकर्ता पक्ष से सात व्यक्तियों को चोटें आई थी जिसमें शिकायतकर्ता स्वयं को सिर पर चोट आई थी जो कि शरीर का एक महत्वपूर्ण अंग है तथा शिकायतकर्ता के परिवार के पांच अन्य सदस्यों को भी चोटें आई थी। इस न्यायालय ने यह कहा कि इन तथ्यों को दृष्टिगत रखते हुए अभियुक्त को नियमित जमानत प्रार्थना-पत्र देना चाहिए।

9. अपर सत्र न्यायाधीश ने **मध्य प्रदेश राज्य प्रति प्रदीप शर्मा, (2014) 2 एससीसी 171** के निर्णय का भी आश्रय लिया। जिसमें यह निर्धारित किया गया है कि धारा 438 दण्ड प्रक्रिया संहिता के अंतर्गत प्रदत्त शक्तियों का प्रयोग अपवादित मामलों में वहीं पर किया जाना चाहिए, जहां अभियुक्त को मिथ्या फसाये जाने का आधार हो।

10. वर्ष 2014 के बाद माननीय उच्चतम न्यायालय की इस विषय पर अनेक विधि-व्यवस्थाएं आ चुकी हैं तथा

विद्वान अपर सत्र न्यायाधीश ने 11 वर्ष पुराने निर्णय का आश्रय लिया जो कि उस समय दिया गया था जब अग्रिम जमानत का प्राविधान प्रदेश में लागू नहीं था।

11. **गुरुबक्श सिंह सिब्बिया बनाम पंजाब राज्य (1980) 2 एससीसी 565** में उच्चतम न्यायालय के पांच माननीय न्यायमूर्तिगण की संवैधानिक पीठ ने यह व्यवस्था दी है कि ऐसा कोई उपबंध नहीं है कि अग्रिम जमानत मात्र अपवाद स्वरूप ही दी जा सकती है। मध्य प्रदेश बनाम प्रदीप शर्मा का निर्णय माननीय उच्चतम न्यायालय के दो माननीय न्यायामूर्तिगण की पीठ ने गुरुबक्श सिंह सिब्बिया बनाम पंजाब राज्य के निर्णय में संविधान पीठ के निर्णय को ध्यान में रखते हुए पारित नहीं किया है। जहां दो माननीय न्यायमूर्तिगण की पीठ का निर्णय पांच न्यायमूर्तिगण की संवैधानिक पीठ के निर्णय में प्रतिपादित विधि-व्यवस्था के विरुद्ध हों वहां यह विधिक स्थिति अविवादित है कि पांच माननीय न्यायमूर्तिगण की संवैधानिक पीठ द्वारा दिया गया निर्णय ही प्रभावी होगा।

12. **सुशीला अग्रवाल बनाम राज्य (राष्ट्रीय राजधानी क्षेत्र दिल्ली) तथा एक अन्य 2020 5 एससीसी पृष्ठ 1** का निर्णय भी एक पांच माननीय न्यायमूर्तिगण के संवैधानिक पीठ ने दिया है, जिसमें अग्रिम जमानत के संबंध में निम्नलिखित सिद्धांत प्रतिपादित किए हैः-

"1. श्री गुरबख्श सिंह सिब्बिया एवं अन्य बनाम पंजाब राज्य के मामले में दिए गए निर्णय के अनुरूप, जब कोई व्यक्ति गिरफ्तारी की आशंका की शिकायत करता है और आदेश के लिए आवेदन करता है, तो आवेदन ठोस तथ्यों (न कि अस्पष्ट या सामान्य आरोपों) पर आधारित होना चाहिए जो कि एक या दूसरे विशिष्ट अपराध से संबंधित हों। अग्रिम जमानत के आवेदन में अपराध से संबंधित केवल आवश्यक तथ्य होने चाहिए और यह भी कि आवेदक को गिरफ्तारी की उचित आशंका क्यों है, साथ ही उसका अपना पक्ष भी होना चाहिए। ये न्यायालय के लिए आवश्यक हैं, जिसे उसके आवेदन पर विचार करना चाहिए, ताकि धमकी या आशंका, उसकी गंभीरता और लगाई जाने वाली किसी भी शर्त की उपयुक्तता का मूल्यांकन कर सके। यह आवश्यक नहीं है कि कोई आवेदन केवल प्रथम सूचना रिपोर्ट दर्ज होने के बाद ही प्रस्तुत किया जाए; इसे पहले भी प्रस्तुत किया जा सकता है, बशर्ते तथ्य स्पष्ट हों और गिरफ्तारी की आशंका के लिए उचित आधार है।

2. धारा 438 के अंतर्गत आवेदन के साथ संपर्क करने वाले न्यायालय के लिए यह उचित हो सकता है कि वह (गिरफ्तारी की) धमकी की गंभीरता के आधार पर सरकारी अधिवक्ता को नोटिस जारी करे और तथ्य प्राप्त करे, यहाँ तक कि सीमित अंतरिम अग्रिम जमानत देते समय भी।

3. दंड प्रक्रिया संहिता की धारा 438 में ऐसा कुछ भी नहीं है जो अदालतों को समय के संदर्भमें राहत को सीमित करने वाली शर्तें लगाने के लिए मजबूर या बाध्य करे, या पुलिस द्वारा प्रथम सूचना रिपोर्ट दर्ज करने पर, या किसी गवाह का बयान दर्ज करने पर, जांच या पूछताछ के दौरान, आदि। किसी आवेदन पर विचार करते समय (अग्रिम जमानत देने के लिए) न्यायालय को अपराध की प्रकृति, व्यक्ति की भूमिका, जांच की प्रक्रिया को प्रभावित करने की उसकी संभावना, या साक्ष्यों के साथ छेड़छाड़ (गवाहों को धमकाने सहित), न्याय से भागने की संभावना (जैसे देश छोड़ना), आदि पर विचार करना होगा। न्यायालयों के लिए यह उचित होगा - और उन्हें दण्ड प्रक्रिया संहिता की धारा 437 (3) (धारा 438 (2) के आधार पर] में उल्लिखित शर्तें लागू करनी चाहिए। अन्य प्रतिबंधात्मक शर्तें लगाने की आवश्यकता का निर्णय मामले दर मामले के आधार पर, और राज्य या जांच एजेंसी द्वारा प्रस्तुत सामग्री के आधार पर किया जाना चाहिए। ऐसी विशेष या अन्य प्रतिबंधात्मक शर्तें लगाई जा सकती हैं यदि मामला या मामलों की आवश्यकता हो, लेकिन सभी मामलों में नियमित रूप से नहीं लगाई जानी चाहिए। इसी प्रकार, अग्रिम जमानत की अनुमति को सीमित करने वाली शर्तें दी जा सकती हैं, यदि किसी मामले या मामलों के तथ्यों में उनकी आवश्यकता हो; हालाँकि, ऐसी सीमित शर्तें अनिवार्य रूप से नहीं लगाई जा सकीं।

4. न्यायालयों को आम तौर पर अपराधों की प्रकृति और गंभीरता, आवेदक को सौंपी गई भूमिका और मामले के तथ्यों जैसे विचारों से निर्देशित होना चाहिए, जब वे

इस बात पर विचार कर रहे हों कि अग्रिम जमानत दी जाए या नहीं। देना या न देना विवेक का विषय है; इसी तरह, यदि हाँ, तो किस प्रकार की विशेष शर्तें लगाई जाएँ (या नहीं लगाई जाएँ) यह भी मामले के तथ्यों पर निर्भर करता है और न्यायालय के विवेक के अधीन है।

5. अग्रिम जमानत, अभियुक्त के आचरण और व्यवहार के आधार पर, आरोप पत्र दाखिल होने के बाद मुकदमे के अंत तक जारी रह सकती है।

6. अग्रिम जमानत का आदेश इस अर्थ में "व्यापक" नहीं होना चाहिए कि यह अभियुक्त को आगे कोई अपराध करने और गिरफ्तारी से अनिश्चितकालीन सुरक्षा का दावा करने का अधिकार न दे। यह उस अपराध या घटना तक ही सीमित होना चाहिए जिसके लिए गिरफ्तारी की आशंका किसी विशिष्ट घटना के संबंध में मांगी गई हो। यह किसी ऐसी भविष्य की घटना के संबंध में लागू नहीं हो सकता जिसमें अपराध का किया जाना शामिल हो।

7. अग्रिम ज़मानत का आदेश किसी भी तरह से पुलिस या जाँच एजेंसी के अधिकारों या कर्तव्यों को सीमित या प्रतिबंधित नहीं करता है, कि वे उस व्यक्ति के खिलाफ आरोपों की जाँच करें जो गिरफ़्तारी-पूर्व ज़मानत चाहता है और उसे ज़मानत दी जाती है।

8. सिब्बिया मामले में "सीमित हिरासत" या "मानी गई हिरासत" के संबंध में की गई टिप्पणियाँ, जाँच अधिकारी की आवश्यकताओं को पूरा करने के लिए, धारा 27 के प्रावधानों को पूरा करने के लिए पर्याप्त होंगी, किसी वस्तु की बरामदगी या किसी तथ्य का पता चलने की स्थिति में, जो ऐसी घटना (अर्थात मानी गई हिरासत) के दौरान दिए गए बयान से संबंधित हो। ऐसी स्थिति में, अभियुक्त को अलग से आत्मसमर्पण करने और नियमित ज़मानत लेने के लिए कहने का कोई प्रश्न (या आवश्यकता) नहीं है। सिब्बिया (सुप्रा) ने टिप्पणी की थी कि " यदि और जब अवसर उत्पन्न होता है, तो अभियोजन पक्ष के लिए साक्ष्य अधिनियम की धारा 27 का लाभ लेना संभव हो सकता है, तथ्यों की खोज के संबंध में, जमानत पर रिहा किए गए व्यक्ति द्वारा दी गई जानकारी के अनुसरण में, इस न्यायालय द्वारा उत्तर प्रदेश राज्य बनाम देवमन उपाध्याय मामले में बताए गए सिद्धांत का आह्वान करके।"

9. पुलिस या जाँच एजेंसी के लिए यह स्वतंत्र है कि वह संबंधित न्यायालय में, जो अग्रिम ज़मानत प्रदान करती है, धारा 439 (2) के अंतर्गत अभियुक्त को गिरफ्तार करने के निर्देश के लिए आवेदन करे, यदि किसी भी शर्त का उल्लंघन होता है, जैसे कि फरार होना, जाँच के दौरान सहयोग न करना, टालमटोल करना, धमकी देना या जाँच या मुकदमे के परिणाम को प्रभावित करने के उद्देश्य से गवाहों को प्रलोभन देना, आदि।

10. उपर्युक्त प्रस्तर (9) में उल्लिखित न्यायालय वह न्यायालय है जो प्रचलित प्राधिकारियों के अनुसार, प्रथम दृष्टया अग्रिम जमानत प्रदान करता है।

11. ज़मानत देने वाले आदेश की सत्यता पर, राज्य या जाँच एजेंसी के कहने पर अपील या उच्च न्यायालय द्वारा विचार किया जा सकता है, और इस आधार पर रद्द किया जा सकता है कि आदेश देने वाले न्यायालय ने महत्वपूर्ण तथ्यों या महत्वपूर्ण परिस्थितियों पर विचार नहीं किया। (देखें प्रकाश कदम व अन्य बनाम रामप्रसाद विश्वनाथ गुप्ता व अन्य; जय प्रकाश सिंह (सुप्रा) सीबीआई के माध्यम से राज्य बनाम अमरमणि त्रिपाठी)। यह दण्ड प्रक्रिया संहिता की धारा 439 (2) के अनुसार "निरस्तीकरण" नहीं है।

12. सिद्धराम सतलिंगप्पा म्हेत्रे बनाम महाराष्ट्र राज्य एवं अन्य (और इसी तरह के अन्य निर्णयों) में की गई यह टिप्पणी कि अग्रिम जमानत देते समय कोई भी प्रतिबंधात्मक शर्तें नहीं लगाई जा सकतीं, को एतद्वारा खारिज किया जाता है। इसी प्रकार, सलाउद्दीन अब्दुलसमद शेख बनाम महाराष्ट्र राज्य और उसके बाद के निर्णयों (जिनमें के. एल. वर्मा बनाम राज्य एवं अन्य; सुनीता देवी बनाम बिहार राज्य एवं अन्य; अद्री धरन दास बनाम पश्चिम बंगाल राज्य; निर्मल जीत कौर बनाम मध्य प्रदेश राज्य एवं अन्य; एचडीएफसी बैंक लिमिटेड बनाम जे.जे. मन्नान; सतपाल सिंह

बनाम पंजाब राज्य और नरेश कुमार यादव बनाम रवींद्र कुमार) में दिए गए निर्णय , जो ऐसी प्रतिबंधात्मक शर्तें या अग्रिम ज़मानत देने को एक निश्चित अवधि तक सीमित करने वाली शर्तें निर्धारित करते हैं, एतद्वारा खारिज किए जाते हैं।"

13. उपरोक्त तथ्यों के दृष्टिगत विद्वान अपर सत्र न्यायाधीश ने विधि-व्यवस्था का समयक रूप से अनुपालन नहीं किया है।

14. जबकि प्रस्तुत प्रकरण में प्रार्थी को मात्र सह-अभियुक्त के अभिरक्षा में दिए गए बयान के आधार पर आरोपी बनाया जा रहा है तथा उक्त के अतिरिक्त प्रार्थी की प्रश्नगत प्रकरण में संलिप्तता दर्शानें के लिए कोई अन्य वैधानिक आधार नहीं है, न्यायालय का मत है कि प्रार्थी अग्रिम जमानत पाने का अधिकारी है।

15. तद्नुसार अग्रिम जमानत प्रार्थना-पत्र **स्वीकार** किया जाता है।

16. उपरोक्त मुकदमा अपराध संख्या में आवेदक की गिरफ्तारी /न्यायालय के समक्ष उपस्थिति की दशा में, उसे संबंधित थाने के भारसाधक अधिकारी / न्यायालय की संतुष्टि के अनुसार व्यक्तिगत बंध पत्र एवं दी प्रतिभू प्रस्तुत करने पर परीक्षण के अंतिम रूप से निस्तारण तक, निम्न शर्तों के अधीन अग्रिम जमानत पर रिहा किया जाएगाः-

क- आवेदक, यदि आवश्यक होगा तो पुलिस अधिकारी द्वारा जॉच हेतु अपेक्षित समय पर उपस्थित होगा।

ख- आवेदक मामले के तथ्यों से परिचित किसी व्यक्ति या पुलिस अधिकारियों को प्रत्यक्ष या परोक्ष रूप से कोई धमकी, वादा या प्रलोभन नहीं देगा जिससे कि वह ऐसे तथ्य को न्यायालय के समक्ष या किसी पुलिस अधिकारी के समक्ष प्रकट न करने पर मान जाए।

ग- आवेदक अदालत की पूर्व अनुमति के बिना भारत नहीं छोड़ेगा;

घ- आवेदक को प्रत्येक निर्धारित तिथि पर ट्रायल कोर्ट के समक्ष उपस्थित होना होगा, जब तक कि व्यक्तिगत उपस्थिति से छूट न दी गयी हो;

ङ- आवेदक अभियोजन पक्ष के गवाह पर दबाव नहीं डालेगा / धमकी नहीं देगा।

च- आवेदक विवेचना एवं विचारण के दौरान सहयोग करेंगे और जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा।

17. इस आदेश की एक प्रति अपर सत्र न्यायाधीश, कक्ष सं०-5, लखीमपुर-खीरी को प्रेषित की जाए।

(2025) 9 ILRA 1146
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.09.2025

BEFORE

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

Criminal Misc. Writ Petition No. 1314 of 2024

Ketan Rastogi & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Mohd. Ghayasuddin Khan, Lav Singh, Mohd. Ghayasuddin Khan, Shyam Narain Mishra

Counsel for the Respondents:
G.A., Manish Soni, Mohit Kumar Rawat, Saurabh Kr Shahi

Issues for Consideration

Whether an application seeking recall of an order passed by a co-ordinate Bench on the basis of a verified compromise, allowing a criminal writ petition and quashing criminal proceedings, was maintainable on the ground of

subsequent developments, including dismissal of a matrimonial case under Section 11 of the Hindu Marriage Act, 1955, and alleged frustration of the compromise.

Headnotes

Constitution of India — Art.226 — Criminal proceedings — Compromise — Quashing of FIR — Recall of order — Subsequent events — Scope of recall jurisdiction — Matrimonial disputes — Section 11 Hindu Marriage Act — No interference warranted.

Held:

The criminal writ petition had earlier been allowed by a co-ordinate Bench on **09.01.2025** on the basis of a **mutual compromise dated 17.02.2024**, duly **verified by the Senior Registrar** of the Court. The compromise clearly recorded settlement of all disputes between the parties and withdrawal/quashing of criminal proceedings arising out of matrimonial discord. [Paras 4–6]

An order passed on the basis of a **voluntary, verified compromise** between the parties cannot be recalled merely on the ground of **subsequent judicial developments**, unless it is shown that the order was obtained by fraud, misrepresentation, or suppression of material facts. No such allegation or material was established in the present case. [Paras 17–18]

The subsequent dismissal of a matrimonial case under **Section 11 of the Hindu Marriage Act, 1955** by the Family Court, even if it resulted in alleged ambiguity regarding marital status, did not furnish a valid ground for recall of the High Court's earlier order, particularly when the legality or correctness of the Family Court's order was **not under challenge** before the High Court. [Paras 7–9, 16]

The Court reiterated the settled legal position that a **void marriage under Section 11 of the Hindu Marriage Act** is void *ipso jure* from inception; however, questions relating to **marital status** and declaration thereof must be adjudicated by a **competent civil/family court** in appropriate proceedings and cannot be incidentally decided in a recall application arising out of criminal writ jurisdiction. [Paras 12–15]

In the absence of any jurisdictional error, fraud, or miscarriage of justice, the recall of an order passed by a co-ordinate Bench on the basis of a lawful compromise was held to be impermissible. The recall application was accordingly rejected. [Paras 17–18] (E-14)

Case Law Cited

Deoki Panjhiyara v. Shashi Bhushan Narayan Azad, (2013) 2 SCC 137 — *relied on*; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 — *relied on;* M. M. Malhotra v. Union of India, (2005) 8 SCC 351 — *relied on;* A. Subash Babu v. State of Andhra Pradesh, (2011) 7 SCC 616 — *relied on*.

List of Acts / Statutes

Constitution of India; Hindu Marriage Act, 1955; Code of Criminal Procedure, 1973

List of Keywords

Criminal writ petition; Compromise; Quashing of FIR; Recall of order; Subsequent developments; Matrimonial dispute; Section 11 Hindu Marriage Act; Void marriage; Scope of recall jurisdiction; Article 226.

Case Arising From

Order dated **09.01.2025** passed by a co-ordinate Bench of the High Court in **Criminal Misc. Writ Petition No. 1314 of 2024**, whereby FIR bearing **Case Crime No. 216 of 2021**, Police Station Thakurganj, District Lucknow, and all consequential proceedings were quashed on the basis of compromise between the parties.

Appearance for Parties

For the Petitioners: Sri Mohd. Ghayasuddin Khan, Sri Lav Singh, Sri Shyam Narain Mishra
For Opposite Party No. 4 / Applicant**:** Sri Manish Soni
For the State: Govt. Advocate

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

(Civil Misc. Application No. IA/5/2025-Application for Recall of order dated 09.01.2025)

1. Vakalatnama filed by Shri Saurabh Kumar Shahi & Shri Mohit Kumar Rawat,

Advocates on behalf of writ petitioners is taken on record.

2. Heard, Shri Manish Soni, learned counsel for applicant/opposite party no. 4 in the writ petition, Shri Saurabh Kumar Shahi and Shri Mohit Kumar Rawat learned counsels for the petitioners.

3. By means of the instant application, Smt. Mohini Verma the applicant / opposite party no. 4, has prayed for the Recall of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court comprising of Hon'ble Mr. Vivek Chaudhary, J. and Hon'ble Mr. Om Prakash Shukla, J. and for the restoration of the case to its original number and to be heard and decided on merits afresh.

4. Record of the writ petition as available before us shows that the co-ordinate Bench of this Court vide Order dated 09.01.2025 decided the writ petition on the basis of a mutual agreement arrived between the litigating parties and allowed the same. The writ petitioner and the applicant herein / opposite party no.4 amicably settled their disputes in the presence of their parents and entered a compromise by executing a compromise deed dated 17.02.2024. The same is on record.

5. The contents of the aforesaid compromise dated 17.02.2024 are reproduced herein below for ready reference:

"हम उभयपक्षकार उपरोक्त सुलहनामा की निम्न शर्तों के अंर्तगत पाबंद होते है: -

1. यह कि प्रथमपक्ष एवं द्वितीयपक्ष का विवाह दिनांक 28.06.2020 को हिन्दू रीति रिवाज के अनुसार दोनो पक्षकारों की उपस्थिति एवं सहमति के अनुसार सम्पन्न सम्पन्न हुआ था।

2. यह कि विवाह के बाद द्वितीयपक्ष विदा होकर प्रथमपक्ष के निवास स्थान पर आयी और दोनो पक्षकारों द्वारा अपने-अपने पति-पत्नी के कर्तव्यों का निर्वाहन किया गया।

3. यह कि उभयपक्षकारों के मध्य कुछ समय पश्चात आचार-विचार न मिल पाने के कारण पक्षकारों के मध्य मनमुटाव व कटुता उत्पन्न होने लगी तथा पक्षकारों के मध्य मनमुटाव व कटुता इतनी अधिक उत्पन्न हो गयी कि पक्षकार दिनांक 27.07.2020 से अलग-अलग रहकर निवास करने लगे।

4. यह कि इस दौरान द्वितीयपक्ष ने थाना-ठाकुरगंज लखनऊ में प्रथमपक्ष व उसके परिवार वालो के विरूद्ध रिपोर्ट मुकदमा सूचना प्रथम संख्या-431/2020, अंर्तगत अपराध धारा 498ए, 323, 504, आई०पी०सी० व 3/4 डी०पी० एक्ट संबंधित थाना-ठाकुरगंज लखनऊ में दर्ज करायी जो न्यायालय श्रीमान ए०सी० जे०एम० (सी०बी०आई०) अयोध्या प्रकरण में अभी विचाराधीन है।

5. यह कि प्रथमपक्ष ने उपरोक्त विवाह को शून्यकरणीय घोषित किये जाने हेतु द्वितीयपक्ष के विरुद्ध एक वाद अंर्तगत धारा-11 हिन्दू विवाह अधिनियम-1955 दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर प्रधान न्यायाधीश कक्ष संख्या-6 पारिवारिक न्यायालय लखनऊ में विचाराधीन है।

6. यह कि द्वितीयपक्ष ने उपरोक्त विवाह विच्छेदन की डिक्री प्राप्त करने हेतु प्रथमपक्ष के विरूद्ध एक वाद अंर्तगत धारा-13 हिन्दू विवाह अधिनियम का वाद दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर प्रधान न्यायाधीश कक्ष संख्या-8 पारिवारिक न्यायालय लखनऊ में विचाराधीन है।

7. यह कि प्रथमपक्ष की माँ श्रीमती मंजू रस्तोगी द्वारा द्वितीयपक्ष व उसकी माँ मीना वर्मा के विरूद्ध एक परिवाद दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर मुख्य न्यायिक मजिस्ट्रेट पंचम लखनऊ के समक्ष विचाराधीन है।

8. यह कि द्वितीयपक्ष ने थाना-ठाकुरगंज लखनऊ में प्रथमपक्ष व उसके परिवार वालो के विरूद्ध प्रथम सूचना रिपोर्ट अपराध संख्या-216/2021 अंर्तगत धारा-392, 354, 506,

504, 323 आई०पी०सी० संबंधित थाना-ठाकुरगंज लखनऊ में कदर्ज कराई है जिसके संबंध में आरोप पत्र न्यायालय में प्रस्तुत नहीं किया गया है।

9. यह कि उभयपक्षकारों एवं द्वितीयपक्ष के रिश्तेदारों एवं शुभचिन्तको तथा पारिवारिक सदस्यों व उभयपक्षकारों के अधिवक्ता महोदय ने मिल बैठकर एवं वार्तालाप करके विवाद को निपटाने का प्रयास किया परन्तु उभयपक्षकार किसी भी दशा में पति-पत्नी के रूप में एक साथ रहकर वैवाहिक जीवन निर्वाहन करने को तैयार नही हुये है।

10. यह कि द्वितीयपक्ष, प्रथमपक्ष से भविष्य में कोई मांग नहीं करेगी एवं प्रथमपक्ष भी भविष्य में द्वितीयपक्ष से कोई मांग नहीं करेगा न ही भारत वर्ष के किसी भी न्यायालय में कोई भी पक्षकार वाद दायर करेगा, यदि ऐसा कोई भी पक्षकार करता है तो इस सुलहनामा के सापेक्ष में निरस्त व शून्य माना जायेगा।

11. यह कि विवाह में एक दूसरे पक्षकार द्वारा दिये गये सामान का आदान-प्रदान के संबंध में कोई भी लेन-देन शेष नहीं रह गया है।

12. यह कि उपरोक्त मुकदमा निस्तारित होने के पश्चात उभयपक्षकार अपना-अपना अन्यंत्र विवाह करने के लिये स्वतंत्र होगें जिस पचर किसी भी पक्षकार को आपत्ति करने का अधिकार नहीं होगा।

13. यह कि उभयपक्षकारों द्वारा एक दूसरे पर दाखिल किये गये वादों को बल न देते हुये सुलह समझौते के आधार पर समाप्त करा लेगें एवं समाप्त कराने में उभयपक्षकार एक दूसरे का सहयोग प्रदान करेंगे। तथा दाखिल वाद अंर्तगत धारा-1। हिन्दू विवाह अधिनियम-1955 जोकि वर्तमान में माननीय अपर प्रधान न्यायाधीश पारिवारिक न्यायालय कक्ष संख्या-6 पारिवारिक न्यायालय लखनऊ में विचाराधीन है को गुणदोष के आधार पर निर्णीत कराने में पूर्ण सहयोग प्रदान करेंगे।

14. यह कि उक्त मुकदमा निर्णीत होने के पश्चात पक्षकार स्वंय एक दूसरे के परिवार के विरूद्ध कोई भी दीवानी/फौजदारी का वाद किसी भी न्यायालय में दाखिल नहीं करेगें।

अतः आज दिनांक 17.02.2024 को बिना किसी जोर दबाव हम पक्षकारों द्वारा यह सुलहनामा समक्ष गवाहों की मौजूदगी में अपने-अपने हस्ताक्षर कर निष्पादित कर दिया ताकि सनद रहे और समय पर काम आवे। "

6. The aforesaid compromise dated 17.02.2024 was duly verified by the Senior Registrar of this Court on 13.12.2024 under the orders of this Court dated 23.02.2024 thereafter the Writ Petition was allowed vide Order dated 09.01.2025 pursuant to the said compromise. The extract of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court is reproduced here-in-below: -

"Supplementary Affidavit filed today is taken on record.

Heard learned counsel for the parties and perused the record.

In the supplementary affidavit filed today, the petitioners have specifically stated that the Suit No. 225 of 2022, under Section 340 Cr.P.C. filed before the family court was dismissed for want of prosecution on 09.08.2024. The plaintiff has not filed any recall application to get the said order dated 09.08.2024 recalled nor the same would be recalled.

Learned counsel for the parties also state that the parties have settled their dispute amicably and submitted their deed of compromise which is on record as Annexure No. 2 to the writ petition. The report of the Senior Registrar of this Court dated 13.12.2024 is on record, according to which he has verified the compromise on 13.12.2024.

According to the terms of the compromise, parties have decided to withdraw all the cases filed by them against each other including First Information Report dated 09.04.2021 bearing Case Crime No.0216 of 2021, under Sections 323,504,506,392,354 I.P.C., Police Station Thakurganj, District Lucknow.

Intent is clear, the informant - Smt. Mohini Verma, who is a signatory to the compromise, does not want to press the FIR, therefore, no purpose would be served in allowing the proceedings even if charge sheet has been filed before the court below to go on considering the nature of the dispute.

Accordingly, the impugned FIR, which is the basis to serve consequential proceedings of investigation and thereafter filing of charge sheet, if any, is hereby quashed. Consequently, all proceedings taken consequent to the lodging of the FIR including charge sheet, if any, filed before the court below stand quashed.

The writ petition is, accordingly, allowed.

The Senior Registrar of this Court shall communicate this order to the court concerned for correcting its record, accordingly.

Learned AGA shall communicate this order to the investigating officer."

7. It has been brought to the notice of this Court by way of the instant Recall Application dated 27.05.2025 that the learned Family Court vide Order dated 06.05.2025 dismissed a pending case having Suit No. 2404 of 2020 filed by the petitioner under Section 11 of the Hindu Marriage Act, 1955 (Ketan Rastogi v. Smt. Mohini Verma). Photostat copy of the said judgement and order has been placed before us for perusal which goes to show that the learned Additional Principal Judge-VI, Family Court, Lucknow dismissed the case, taking into account the fact that the parties have settled their dispute before the High Court and further that the plaintiff, namely, Ketan Rastogi has failed to establish his claim as made in the plaint. The relevant portion of the said judgement and order 06.05.2025 is extracted herein below for convenience:

"…….. चूंकि उभय पक्षों के मध्य लेन देन से सम्बन्धित विवाद सुलहनामें द्वारा समाप्त कर लिया गया है। अतः उपरोक्त समस्त तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए वादी द्वारा याचित उपरोक्त अनुतोष प्रदान किये जाने का कोई औचित्य नहीं है।

प्रस्तुत प्रकरण में वादी अपने कथन को साबित नहीं कर पाया है। वाद बिन्दु संख्या-1 भी उसके विरूद्ध निर्णीत हुआ है। अतः उपरोक्त समस्त तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए न्यायालय के मतानुसार वादी किसी अनुतोष को प्राप्त करने का अधिकारी नहीं है। तदनुसार वाद बिन्दु संख्या-2 वादी के विरूद्ध निर्णीत किया जाता है।

प्रस्तुत वाद में वाद बिन्दु संख्या-1 व 2 वादी के विरूद्ध निर्णीत हुआ है तथा वादी किसी अन्य अनुतोष को प्राप्त करने का अधिकारी नहीं पाया गया है अतः समस्त तथ्यों व परिस्थितियों व पत्रावली पर उपलब्ध अभिलेखां व दस्तावेजी साक्ष्य के अवलोकन के उपरान्त न्यायालय के मतानुसार प्रस्तुत वाद अन्तर्गत धारा-11 हिन्दू विवाह अधिनियम 1955 निरस्त किए जाने योग्य है।

आदेश

वादी केतन रस्तोगी द्वारा प्रतिवादिनी श्रीमती मोहिनी वर्मा उर्फ सना फातिमा के विरुद्धं प्रस्तुत वाद अन्तर्गत धारा-11 हिन्दू विवाह अधिनियम 1955 निरस्त किया जाता है।

पत्रावली नियमानुसार दाखिल दफतर हो।"

8. Since, the correctness and legality of the aforesaid Judgement and Order dated 06.05.2025 passed by the Learned Family Court under section 11 of the Hindu Marriage Act, 1955 is not under challenge before us, as such, there is no occasion for us to enter into the merits of the same, in the present proceeding.

9. Contention of the learned counsel for the opposite party no.4/Applicant herein, is that as per the terms of the aforesaid compromise, the opposite party no.4 bonafidely withdrew her petition filed under Section 13 of the Hindu Marriage Act, 1955 from the learned Family Court but after the passing of the Order dated 06.05.2025 whereby the petitioner's application under Section 11 of the Hindu Marriage Act, 1955 has been rejected, the marital-status of the Applicant / opposite party no. 4 has fallen in dilemma and the purpose of the aforesaid settlement and compromise dated 17.02.2024 has been frustrated.

10. The uncontroverted facts that emerged out of the submissions advanced by the learned counsels for the parties are that (i) the Applicant herein namely Smt. Mohni Verma entered into matrimonial relationship with one Dr. Zafar Sayeed through *Nikah* on 06.07.2013 after embracing Islam and opted Sana Fatima as her name (ii) the marriage of the petitioner namely Ketan Rastogi was solemnized as per the Hindu rites at *Ramjanki Dharmshala* at Lucknow with Smt. Mohini Verma on 28.06.2020 (iii) divorce petition seeking divorce from her earlier husband namely Dr. Zafar Sayeed was filed in the month of August 2020 and the same was decreed on 19.01.2021 by the Court of Additional Principal Judge- X, Family Court, Lucknow.

11. None of the parties who are present-in-person before this Court could furnish a particular date as to when the Applicant / opposite party no.4 again came back in the fold of Hindu religion. On a pointed query as to how marriage could have taken place in accordance with the Hindu methodology, between the persons with different religion, neither the learned Counsels appearing on behalf of the parties nor the parties themselves could give any satisfactory reply.

12. Be that as it may, we at this stage do not find it appropriate to delve into factual matrix of the case to decide the disputed issues involved in the matter while holding the present roaster of Criminal Writs under Article 226 of the Constitution of India. However, it would not be out of place to mention the settled law on the subject as under:

Section 11 of the Hindu Marriage Act, 1955 deals with the void marriages. For a ready reference the same is quoted hereinbelow: -

"11. Void Marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Section 5*(i)* of the Hindu Marriage Act, 1955 provides that a marriage may be solemnized between two Hindus, if neither party has a spouse living at the time of marriage.

Thus, the necessary conditions for a lawful wedlock under this provision is that neither of the parties should have a spouse living at the time of marriage and mandatorily they are Hindus. The marriage in contravention of this condition is void *ipso jure* in terms of Section 11 read with Section 5 (i) of the Hindu Marriage Act, 1955 and non-existent in the eyes of law

being void from its very inception. Further, a marriage which is *void ab initio* does not alter or affect the status of the parties, nor does it create between them any rights and obligations which must be normally arisen from a valid marriage, except such rights as are expressly recognized by the Act. The Hon'ble Supreme Court in the case of **Deoki Panjhiyara versus Shahshi Bhushan Narayan Azad & Another,** reported in **2013 (2) SCC 137,** held as follows:

"Admittedly, both the appellant and the respondent are governed by the provisions of the Hindu Marriage Act, 1955. Section 11 of the Hindu Marriage Act makes it clear that a marriage solemnised after the commencement of the Act "shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions so specified in clauses (i), (iv) and (v) of Section 5."

13. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955, the Hon'ble Apex Court in the case of **Yamunabai Anantrao Adhav versus Anantrao Shivram Adhav and another;** reported in **(1988) 1 Supreme Court Cases 530** has taken the view that a marriage covered by Section 11 is *void-ipso-jure*, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in the case of **Yamunabai** (*supra*) also there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be *ipso jure* void. A similar view has been expressed by the Hon'ble Supreme Court in a later decision pronounced in the case of **M. M. Malhotra versus Union of India and others;** reported in **(2005) 8 Supreme Court Cases 351,** wherein the view expressed in **Yamunabai** (*supra*) was also noticed and reiterated. It is notable that the view expressed by Hon'ble The Apex Court in the case of **M.M. Malhotra** (*supra*) was rendered in the situation where the fact i.e. previous marriage was admitted by the lady and there was no dispute with regard to the factum of the earlier marriage of one of the spouses, leading to a declaration of the invalidity of the marriage between the parties. Paragraph 10 of the judgement passed in **M.M. Malhotra** (*supra*) is extracted here in below:

"10. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Marriage Act") have to be examined. Section 11 of the Marriage Act declares such a marriage as null and void in the following terms:

"11. Void marriages.-Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5."

Clause (i) of Section 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A

marriage in contravention of this condition, therefore, is null and void. By reason of the overriding effect of the Marriage Act as mentioned in Section 4, no aid can be taken of the earlier Hindu law or any custom or usage as a part of that law Inconsistent with any provision of the Act. So far as Section 12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of Section 5(i) of the Act. Sub-section (2) of Section 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all, if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of Section 16, which is quoted below, also throw light on this aspect:

"16. Legitimacy of children of void and voidable marriages.-(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws. (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

(emphasis supplied)

Sub-section (1), by using the words italicised above clearly implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by Section 12, sub-section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Sections 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the

appellant must, therefore, be treated as null and void from its very inception."

14. The Hon'ble Supreme Court in the case of **A. Subash Babu versus State of Andhra Pradesh & Another;** reported in **(2011) 7 Supreme Court Cases 616,** while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198(1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under Section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

"Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."

(emphasis supplied by this Court)

15. It goes without saying that the declaration of the parties' marital-status, strikes at the very core of society. Declaration in the light of Section 11 of Hindu Marriage Act, 1955 can be made only by a competent court of law in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. The courts are under obligation to render a complete and effective decision with regard to the marital status of the parties.

16. Be that as it may, as we have observed in the preceding paragraph that in the instant proceeding wherein only the above mentioned Application for Recall of the order dated 09.01.2025 is before us for consideration and in the absence of any material before this Court and more particularly when the same is not before us for adjudication, we refrain ourselves to record any finding on the merits and correctness of the Judgement and Order dated 06.05.2025, passed by the learned Family Court under Section 11 of the Hindu Marriage Act 1955 in Case No.2404 /2020, at this stage.

17. Taking into consideration the contentions raised by the Opposite Party No.4 / Applicant herein, seeking recall of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court comprising of Hon'ble Mr. Vivek Chaudhary, J. and Hon'ble Mr. Om Prakash Shukla, J. whereby the Writ Petition having **Criminal Misc. Writ Petition No.1314 of 2024** was allowed consequent to the amicable settlement of dispute between the parties through Compromise Deed dated 17.02.2024; we find no good ground warranting this Court to interfere with the said Order dated 09.01.2025, merely on the premise of some subsequent development, that too, a judicial pronouncement dated 06.05.2025 rendered by a competent Court of law.

18. Accordingly, the instant Application for Recall dated 27.05.2025, is **consigned to record as rejected.**

19. Needless to say that in any case if the litigating parties feel aggrieved by the aforesaid judgment and order dated 06.05.2025 passed by the learned Additional Principal Judge-VI, Family Court, Lucknow, it is open for them to avail appropriate legal recourse in respect of the same in the manner as prescribed under law.

(2025) 9 ILRA 1155
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.09.2025

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Revision No. 55 of 2024

Abhishek Singh Yadav ...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Revisionist:
S.M. Iqbal Hasan

Counsel for the Opposite Parties:
G.A., Purushottam Pandey

Issue for Consideration

(i) Whether an application for maintenance under **Section 125 Cr.P.C.** is maintainable against a **minor husband**, and whether recovery proceedings under Section 128 Cr.P.C. are barred on that ground;
(ii) Whether the quantum of maintenance awarded required modification in light of the husband attaining majority during proceedings and the principles governing assessment of income and proportionality.

Headnotes

Code of Criminal Procedure, 1973 — ss. 125, 128 — Family Courts Act, 1984 — ss. 10, 18 — Maintenance — Proceedings against minor husband — Maintainability — Attainment of majority — Commencement of liability — Assessment of income — Proportionality — Revisional interference — Modification of quantum.

Held:

Proceedings under Chapter IX of the Code of Criminal Procedure are governed exclusively by the Cr.P.C. and not by the Code of Civil Procedure. There is no statutory bar under Section 125 or Section 128 Cr.P.C. against initiation of maintenance proceedings against a husband who was minor at the time of filing of the application. The objection as to maintainability on the ground of minority was therefore unsustainable. [Paras 14–17]

For determination of age, high school examination certificate carries primacy. On the basis of such certificate, the revisionist was found to have attained the age of majority on 01.01.2021. A minor husband cannot be presumed to have sufficient means; however, upon attaining majority, the legal obligation to maintain his wife and minor child arises. [Paras 22–25]

In absence of proof of actual income, the Court is entitled to make a reasonable estimation of earning capacity, particularly where the husband is able-bodied. The Court applied settled principles that maintenance should be realistic and proportionate, ordinarily not exceeding 25% of the net income, and must avoid both excessiveness and inadequacy. [Paras 27–29]

The maintenance awarded by the Family Court was found to be disproportionate to the estimated income. Accordingly, the order was modified, fixing maintenance at ₹2,500 per month to the wife and ₹2,000 per month to the minor daughter, payable from 01.01.2021, i.e., the date on which the revisionist attained majority. Arrears were directed to be recalculated accordingly, with adjustment of any excess payment. [Paras 29–32]

Criminal revision partly allowed to the above extent. [Para 32] (E-14)

Case Law Cited

Rajnesh v. Neha, **(2021) 2 SCC 324 — applied*; Kulbhushan Kumar (Dr.) v. Raj Kumari*, (1970) 3 SCC 129-relied on.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Family Courts Act, 1984.

List of Keywords

Maintenance; Minor husband; Maintainability; Attainment of majority; Commencement of liability; Assessment of income; Proportionality; Revisional jurisdiction; Modification of maintenance.

Case Arising From

Judgment and order dated **22.11.2023** passed by the Additional Principal Judge, Family Court No.1, Bareilly in **Criminal Misc. Case No. 1546 of 2019** (Smt. Sheela Devi & Another v. Abhishek Yadav), Police Station Visharatganj, District Bareilly.

Appearance for Parties

For the Revisionist: Sri S. M. Iqbal Hasan
For the Opposite Party: Sri Ravindra Kumar, Advocate holding brief of Sri Purushottam Pandey
For the State: Learned Government Advocate

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Rejoinder affidavit filed on behalf of the revisionist and the supplementary counter affidavit filed on behalf of opposite party nos. 2 and 3 in the Court today are taken on record.

2. Heard Mr. S.M. Iqbal Hasan, learned counsel for the revisionist, Mr. Ravindra Kumar, Advocate holding brief of Mr. Purushottam Pandey, learned counsel for opposite party nos.2 and 3 and the learned A.G.A. for the State.

3. This criminal revision has been filed by the revisionist under Section 397/401 Cr.P.C. with a prayer to set aside the judgment and order dated 22nd November, 2023 passed by the Additional Principal Judge, Family Court No.1, Bareilly in Criminal Misc. Case No. 1546 of 2019 (Smt. Sheela Devi & Another Vs. Abhishek Yadav) under Section 125 Cr.P.C., Police Station-Visharatganj, District-Bareilly, whereby the trial court while allowing the instant application of the opposite party nos. 2 and 3 has directed the revisionist to pay Rs. 5,000/- per month to opposite party no.2 and Rs. 4,000/- per month to opposite party no.3 towards monthly maintenance allowance from the date of filing of the instant application.

4. Learned counsel for the revisionist submits that it is no doubt true that the marriage of the revisionist has been solemnized with opposite party no.2 on 10th July, 2016 and from the aforesaid wedlock opposite party no.3 was born on 21st September, 2018. At the time of marriage the revisionist was about 13 years old. It is further submitted that at the time of filing of instant application under Section 125 Cr.P.C. by opposite party nos. 2 and 3 i.e. 10th February, 2019, the age of the revisionist was about 16 years, which is evident from his high school examination mark-sheet-cum certificate in which his date of birth is mentioned as "1st January, 2003", a copy of which has been brought on record at page 69 of the paper book. He submits that since the revisionist was minor, no maintenance case could be filed or maintainable against a minor, inasmuch as the same could only be filed through his/her guardian according to the provisions of Code of Civil Procedure read with Sections 10 and 18 of the Family Court Act, 1984. Qua the issue raised above, the provisions of Criminal Procedure Code is constant, the provisions of Code of Civil Procedure shall be applicable. Since the instant application filed by opposite party no.2 against the revisionist when he was minor without impleading his guardian, the execution proceedings under Section 128 Cr.P.C. pursuant to the judgment passed in

the proceedings under Section 125 Cr.P.C. can also not be executed. As such, the instant application under Section 125 Cr.P.C. is maintainable against the revisionist as who was minor at the relevant time and also the execution proceedings initiated against the revisionist cannot be legally sustained is liable to be set aside.

5. Learned counsel for the revisionist again submits that since the opposite party no.2 has refused to live with her husband i.e. the revisionist without any sufficient cause, therefore, as per Section 125 (4) Cr.P.C. she is not entitled to get any maintenance allowance from him.

6. The learned counsel for the revisionist next submits that the revisionist is a student and he has no source of income, he is dependent upon his parents, whereas the trial court without appreciating evidence available on record with regard to his income, has wrongly assessed the monthly income of the revisionist as Rs.25,000/- per month to Rs. 30,000/- per month. Learned counsel for the revisionist then submits that even if it is assumed that the revisionist is an able bodied person, he may somehow earn Rs. 10,000/- per. Under such circumstances, amount of total maintenance allowance i.e. Rs. 9,000/-per month (Rs. 5,000/-+Rs.4,000/-) as awarded by the trial court under the impugned judgment is too excessive and exorbitant and against the settled law by the Hon'ble Supreme Court of India in the case of **Rajnesh Vs. Neha** reported in *(2021) 2 SCC 324*.

7. On the above premise, learned counsel for the revisionist submits that since the trial court while allowing the instant application filed by opposite party nos. 2 and 3 under Section 125 Cr.P.C. has committed gross error, the same is liable to be set aside.

8. On the other-hand, the learned counsel for opposite party no. 2 and the learned A.G.A. for the State have opposed the submissions made by the learned counsel for the revisionist by submitting that the appellate court has not committed any illegality or infirmity in passing the impugned judgment and awarding Rs. 5,000/- per month to opposite party no.2 (wife) and Rs. 4,000/- per month to opposite party no.3 (minor daughter) towards maintenance allowance from the date of filing of the instant application, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

9. Besides the above, learned counsel for opposite party no.2 submits that the submission of the learned counsel for the revisionist that at the time of filing of instant application under Section 125 Cr.P.C. i.e. 10th February, 2019, the age of the revisionist was 25 years and he was not minor at that time, as is evident from the written statements filed by the revisionist before the trial court, which has been brought on record at page 44 onwards of the paper book. He, however, submits that the date of birth mentioned in high school examination mark-sheet-cum-certificate as 1st January, 2003 is not disputed.

10. Learned counsel for opposite party no.2 further submits that since the opposite party no.2 is legally wedded wife and the opposite party no.3 is real minor daughter of the revisionist, on account of the fact that at the time of filing of instant application under Section 125 Cr.P.C. he was minor, he cannot shirk upon his pious responsibility to maintain his wife and daughter. There is no bar in the Code of

Criminal Procedure which prohibits a wife to initiate proceedings under Section 125 Cr.P.C. against her minor husband and also no recovery proceedings can be executed against such husband. Even otherwise, learned counsel for opposite party no.2 submits that the aforesaid issues have not been raised before the trial court, where the same can be adjudicated upon by the trial court through oral as well as documentary evidence and for the first time such issues have been raised before the revisional court. As such, this Court may not examine the same at this stage in exercise of its powers under Section 397/401 Cr.P.C.

11. Learned counsel for opposite party no.2 then submits that the revisionist is living in a joint Hindu family and 55 bighas of agricultural land, one XYLO Car and a tractor are in the name of his father. Keeping in mind the total income of the joint family and his share in the same, the total amount of monthly maintenance allowance i.e. total Rs. 9,000/- per month in favour of opposite party nos. 2 and 3 under the impugned judgment is reasonable, realistic and justifiable and the same cannot be interfered with by this Court in exercise of revisional jurisdiction and also there is no bar that pursuant looking to the present scenario and inflation, the amount of maintenance allowance as awarded by the appellate court under the impugned judgment cannot be said to be excessive or exorbitant.

12. On the above premise, learned counsel for opposite party no.2 submits that since the appellate court while passing the impugned judgment has not committed any error in the eyes of law, therefore, present criminal revision is liable to be dismissed.

13. I have considered the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perused of record including the impugned judgment.

14. So far as the first submission of the learned counsel for the revisionist that since the revisionist at the time of filing of instant application was minor, therefore, such application could not be maintainable and also the recovery proceeding so initiated pursuant to any order passed therein could also not be executed, is concerned, this Court may record that as per Sections 10 and 18 of the Family Court Act, Chapter-IX of the Code of Criminal Procedure, wherein Section 125 Cr.P.C. is contained, is not applicable. For ready reference, Section 10 and 18 of the Family Court Act read as under:

"Section 10. Procedure General:

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

18. Execution of decrees and orders.-

(1). A decree or an order, other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

15. Perusal of the aforesaid provisions, only Chapter IX of the Code of Criminal Procedure shall be applicable to the case filed under Section 125 Cr.P.C. and the application filed under Section 128 Cr.P.C. The Court has to see only the provisions enshrined in Chapter-IX of the Code of Criminal Procedure and in the provisions/sections contained in Chapter-IX Cr.P.C., it has nowhere mentioned that proceedings under Sections 125 and 128 Cr.P.C. cannot be initiated against a minor but can be initiated through his guardian.

16. Section 125 Cr.P.C. provides that if any person having sufficient means neglects or refuses to maintain (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

17. On the basis of the aforesaid provisions, this Court is inclined to refused the submission of the learned counsel for the revisionist qua the minority of the revisionist at the time of filing of instant application, as there is no bar in entertainment of application under Section 125 Cr.P.C. and Section 128 Cr.P.C. filed against a minor.

18. Now this Court comes to the submission of the learned counsel for opposite party no.2 that the issue regarding the minority of the revisionist at the time of filing of instant application has not been raised before the trial court and also the high school examination mark-sheet-cum-certificate has not been testified before the trial court and the same has only been raised and produced before this Court for

the first time, therefore, the same cannot be examined by this Court in exercise of revisional jurisdiction.

19. Since the issue raised by the learned counsel for the revisionist that since at the time of filing of instant application under Section 125 Cr.P.C. the revisionist was minor, therefore, the same could not be maintainable relates to question of substantial law, therefore, this Court may consider the same as this Court sits in a revisional jurisdiction.

20. So far as the submission made by the learned counsel for the revisionist that since the opposite party no.2 has refused to live with her husband with sufficient cause, she is not entitled to get any maintenance allowance, is concerned, this Court may record that the trial court while deciding issue no.2 has recorded categorical finding that the opposite party n o.2 has sufficient cause to live separately from the revisionist as since marriage, the opposite party no.2 was subjected to harassment and cruelty for demand of additional dowry. It has also been recorded that the revisionist has himself admitted in his cross-examination that in the marriage he has taken dowry. It has also been recorded that after compromise the opposite party no.2 returned to her matrimonial house but after some time, she was again subjected to harassment and cruelty for demand of additional dowry.

21. This Court cannot embark upon a re-appreciation of evidence as suggested by the learned counsel for the revisionist. The evidence led before the trial court has been dealt with by the trial court while passing the impugned judgment. Therefore, this Court is of the view that this Court cannot substitute its own finding while exercising its powers under Section 397/401 Cr.P.C. Even otherwise, if the opposite party no.2 has refused to live with her husband i.e. revisionist during the course of trial, it cannot be presumed that she did not want to live with her husband since the date of marriage. On account of facing harassment and cruelty time and again on the part of the revisionist, now she has refused to live with her husband. As such, the opposite party no.2 has sufficient and cogent reason to live separately from her husband.

22. It is pertinent to notice here that high school examination mark-sheet-cum-certificate on the basis of which the minority of the revisionist at the time of filing of instant application under Section 125 Cr.P.C. has been claimed, has been produced before this Court for the first time and the same has not been produced before the trial court due to which the authenticity or veracity or other wise of the same has not been examined by summary proceedings i.e. trial proceedings. However, looking to the fact that purely legal question is involved in the same, the fact that there is huge pendenecy before the trial court and for saving the precious time of the trial court as well as keeping in mind the fact that if the case is remanded back to the trial court, the opposite party nos. 2 and 3 will have forced to run from pillar to post to get maintenance allowance, this Court may examine the said legal issue considering the said certificate produced by the revisionist before this Court treating it to be genuine, as the learned counsel for the opposite party no.2 has also not disputed the correctness or otherwise of the same.

23. To find out the correct age of any person, every court first considers the high school examination mark-sheet or certificate because as per settled law, for

verifying the correct age, the high school examination certificate or mark-sheet is given first preference. In such circumstances, this Court has to consider the age of the revisionist mentioned in his high school examination mark-sheet-cum-certificate in which the date of birth of the revisionist is mentioned as "1st January, 2023", meaning thereby that on 1st January, 2021, the revisionist has attained the age of majority i.e. 18 years. This Court has also room to doubt that a minor person himself dependent upon his parents and in any case it cannot be presumed that he has sufficient means to maintain himself. In any view of the matter he cannot able to maintain his wife and daughter. However, as and when he attains the age of majority i.e. 18 years of age, he has to bear his responsibly in order to maintain his legally wedded wife and his real minor daughter.

24. It is admitted case that opposite party no.2 is legally wedded wife of the revisionist whereas the opposite party no.3 is his real minor daughter. The Hon'ble Supreme Court of India in the case of **Rajnesh Vs. Neha** reported in *(2021) 2 SCC 324* has opined that since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband is required to earn money even by physical labour, if he is able-bodied, and cannot not avoid his obligation.

25. It is no doubt true that at the time of filing of instant application under Section 125 Cr.P.C. i.e. 10th February, 2019 the revisionist was minor but at the time of passing of the impugned judgment i.e. 22nd November, 2023 he attained the age of majority i.e. approximately 20 years old. In such circumstances, this Court is of the considered view that before the date of attaining the age of majority i.e. when he was minor, it was not obligatory upon him to maintain his legally wedded wife and real minor daughter, but just after attaining the age of majority, he will be become liable not only to maintain himself but it is legally obligatory upon him to maintain his wife and minor daughter.

26. So far as the exact income of the revisionist is concerned, there is nothing on record to ascertain the exact income of the revisionist from the date he attained the age of majority i.e. 1st January, 2021. However, it is cropped up from the testimonies of the witnesses that there is 55 bighas of agricultural land, one XYLO car and one tractor in the joint family of the revisionist. However, unless the revisionist's share is received, his exact income cannot be known.

27. However, considering the fact that the revisionist who has not claimed that he is not physically deformed, is able bodied person, this Court may record that in that circumstance, if it is considered that he is a labourer, then he would at least earn Rs. 600/- per day, meaning thereby that his total monthly income would be Rs.18,000/- per month.

28. The Hon'ble Supreme Court of India in the cases of **Rajnesh Vs. Neha** reported in *(2021) 2 SCC 324* and **Kulbhushan Kumar (Dr) v. Raj Kumari** reported in **(1970) 3 SCC 129,** has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable

for the respondent, nor should it be so meagre that it drives the wife to penury.

29. Keeping in view of the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnesh v. Neha and Kulbhushan Kumar (Dr) (Supras),** this court is of the considered opinion that the total amount of maintenance allowance awarded by the trial court i.e. Rs. 5,000/-+Rs.4,000/- per month (total Rs.9,000/- per month) is not commensurate as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases. 25% of the total monthly amount i.e. Rs. 18,000 as quantified by this Court herein-above would be Rs.4,500/-. Therefore, the same is reduced to Rs. 2,500/- per month to opposite party no.2 (wife) and Rs. 2,000/- per month to opposite party no.3 (minor daughter) and the same shall be payable from the date when the revisionist attained the age of majority i.e. 1st January, 2021.

30. Consequently, judgment and order dated 22nd November, 2023 passed by the Additional Principal Judge, Family Court No.1, Bareilly in Criminal Misc. Case No. 1546 of 2019 (Smt. Sheela Devi & Another Vs. Abhishek Yadav) under Section 125 Cr.P.C., Police Station-Visharatganj, District-Bareilly, is modified to the extent that now the revisionist shall pay Rs. 2,500/- per month to opposite party no.2 (wife) and Rs. 2,000/- per month to opposite party no.3 (minor daughter) towards maintenance allowance from 1st January, 2021.

31. It is also clarified that the arrears of amount towards maintenance allowance as awarded by the court below shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

32. The present criminal revision is, accordingly, **partly allowed.**

33. There shall be no order as to costs.

(2025) 9 ILRA 1162
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.09.2025

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Revision No. 738 of 2024

Charanjeet Kaur @ Manpreet Kumar ...Revisionist

Versus

State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Shobha Vati, Shyam Narayan Verma

Counsel for the Opposite Parties:
G.A., Upendra Kumar Singh

ISSUE FOR CONSIDERATION

Whether the Civil Judge (Junior Division), F.T.C., had jurisdiction to entertain and decide the complaint filed under Section 12 of the Domestic Violence Act, 2005, based on the alleged last cause of action arising in a district.

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections – 127 - Protection of Women from Domestic Violence Act, 2005 - Section 2, 2(a), 29f), 2(s), 3, 12, 19, 27, 27(a), 27(b), 27(c)_- Criminal Revision – challenging the judgment and order passed by the Additions Sessions Judge – under section 12 of the DV Act, - whether district courts had jurisdiction under Section 12 of the DV Act, in a case where revisionist alleged harassment,

dowry demands, and denial of maintenance by her husband and in-laws - Trial court granted her relief - the appellate court set aside the order citing lack of jurisdiction, since the marriage and earlier incidents occurred in Uttarakhand and Rajasthan - The revisionist argued that the last cause of action arose in district (Bareilly) during a Panchayat meeting where dowry demands were reiterated, thereby conferring jurisdiction under Section 27(c) - The Court observed that the D.V. Act provides broad protection to women in domestic relationships, recognizes shared households lived in "at any point of time," and allows jurisdiction based on cause of action, not just residence or employment – Court held that, the appellate court wrongly set aside the trial court's order by ignoring the distinction between Section 27(a)/(b) and Section 27(c) of the DV Act - Since the last cause of action arose in Bareilly, the Civil Judge there had jurisdiction to entertain the complaint - Accordingly, the appellate court's order is quashed, and the trial court's order is affirmed – further, court clarified that court is not expressing any other opinion on the other issues – accordingly, criminal revision is allowed. (Para – 25, 26, 27, 28, 29)

Application Allowed. (E-11)

CASE LAW CITED

Prabha Tyagi Vs. Kamlesh Devi – MANU/SC/0631/2022.

LIST OF ACTS

Protection of Women from Domestic Violence Act, 2005 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Criminal Revision – Jurisdiction to entertain the complaint - revisional Jurisdiction - Domestic Violence - Shared Household - Domestic Relationship - Cause of Action - Dowry Demand – Maintenance - Ex-parte Order - Panchayat Meeting - at any point of time – domestic relationships - recognizes shared households - appellate court – trial court – fast track court – specific finding - other issues.

CASE ARISING FROM

Criminal Revision against appellate order dated 16th November 2023 (Criminal Appeal No. 17 of 2022, *Surendra Singh vs. State of U.P. & Another*) - Original complaint filed under Section 12 of D.V. Act (Complaint Case No. 984 of 2016, *Smt. Charanjeet Kaur @ Manjeet Kaur vs. Sardar Rao Virendra Singh @ Bhola Singh & Others*) - Trial court order dated 8th September 2022 granting relief to revisionist.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Shyam Narayan Verma and Ms. Shobha Wati

Counsel for Respondent(s): G.A., Mr. Upendra Kumar Singh.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard Mr. Shyam Narayan Verma and Ms. Shobha Wati, learned counsel for the revisionist, Mr. Upendra Kumar Singh, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present criminal revision has been preferred by the revisionist with the prayer to set aside the judgment and order passed by the Additional Sessions Judge, Court No.10, Bareilly dated 16th November, 2023 in Criminal Appeal No. 17 of 2022 (Surendra Singh Vs. State of U.P. & Another) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act"), Police Station-Baradari, District-Bareilly, whereby the appeal filed by opposite party no.2 against the judgment and order dated 8th September, 2022 passed by the Civil Judge (Junior Division), F.T.C., Court no.1, Bareilly in the case under Section 12 of the D.V. Act has been allowed and set aside the said order of the Civil Judge.

3. The crux of the allegation made by the revisionist is that the marriage of the revisionist was solemnized with Sardar Rao Virendra Singh on 27th May, 2005 in accordance with Sikhism Rites and Customs at Sitarganj, Uttarakhand. From the aforesaid wedlock, three daughters, namely, Devendra Kaur, Ms. Parveen Kaur

and Sukhmani Kaur were born. After some time of marriage, the relationship between the revisionist with her in-laws including her husband became strained and incompatible. Consequently, the revisionist had given an application before the Superintendent of Police, Alwar Rajasthan, the last being dated 15th August, 2016 wherein it was alleged that for additional demand of dowry of Rs. 50,000/- as also for her being delivered three female children, her two brothers-in-laws had beaten her badly with sticks from which she had sustained head injuries and her treatment was undertaken at Government Hospital, Govindgarh, Alwar, Rajasthan. On 20th September, 2016, the revisionist, her parents and other family members came to office of Monitor Patrika of Baradari, Stadium Road, Police Station-Baradari, District Bareilly where a meeting/*'Panchayat'* was fixed. In-laws of the revisionist along with some known persons armed with weapons also came there and participated in the meeting. During the meeting, at around 07:00 p.m. all the members of her in-laws started to abuse the revisionist and her father while threatening that unless they do not fulfil their additional demand of dowry of Rs. 50,000/-, they would not allow the revisionist to stay/live at her in-laws' place along with her three daughters. Consequently, an application was made by the revisionist before the Senior Superintendent of Police Bareilly. Although the most of the cause of action arose in Sitarganj, Uttarakhand but due to said marriage, the last cause of action arose at a office in the name of Monitor Patrika situated at the Police Station-Baradari, District-Bareilly, the revisionist made a complaint bearing Complaint Case No. 984 of 2016 (Smt. Charanjeet Kaur @ Manjeet Kaur Vs. Sardar Rao Virendra Singh @ Bhola Singh and Others) under Section 12 of the D.V.Act, Police Station-Baradari, District-Barielly on 3rd October, 2016. The court below, after considering the facts and circumstances of the case vide ex-parte order dated 8th September, 2022 under Section 12 of the D.V. Act allowed the said complaint and directed her in-laws including her husband either to make arrangement for a residential accommodation to her along with her daughters or to pay Rs. 9,000/- per month under Section 19 of the D.V. Act. The court below has also directed the in-laws of the revisionist to pay a lump sum amount of Rs. 4,00,000/- (rupees four lacs only) to the revisionist and her three daughters for their maintenance under Section 20 (3) of D.V.Act. Feeling aggrieved by the said order, the opposite party no. 2 filed Criminal Appeal No. 17 of 2022 (Surendra Singh Vs. State of U.P. and Charanjeet Kaur & Manpreet Kaur) under Section 12 of the D.V. Act. The said appeal was allowed by the appellate court vide order dated 16th November, 2023 on the ground that since the court below had no jurisdiction to try the complaint filed by the revisionist under Section 12 of D.V. Act, therefore, the ex-parte order passed by the trial court has been set aside. Hence the present criminal revision.

4. Contention of the learned counsel for the revisionist is that the appellate court, without considering the facts and circumstances of the case and without applying its judicial mind, has passed the impugned order, which per se illegal, arbitrary and unfair in the eyes of law. It is further contended that due to non-fulfilment of additional demand of dowry to the tune of Rs. 50,000/- and also due to the fact that she delivered three female children and not any male child, the

revisionist along with her parents were tortured and harassed by her in-laws including her husband. The revisionist was also not permitted by them to live at her matrimonial house along with her daughters. The in-laws of the revisionist clearly refused to bear her and her daughters' expenses. Despite the fact that in-laws of the revisionist have a lot of agriculture land and 8 to 10 houses, but due to greed, they used to demand the additional dowry. Due to ill treatment by the in-laws of the revisionist, she and her daughters remained ill most of the time and because of the same, a lump sum Rs. 10 lakhs were spent for their treatment. It is lastly argued by the learned counsel for the revisionist that since the last cause of action arose within the territorial limits of Police Station-Baradari, District Bareilly, therefore the complaint legally lies within the territorial jurisdiction of District Court, Bareilly. Therefore, the court below, while allowing the complaint filed by the revisionist under Section 12 of the D.V. Act has not committed any error under the ex-parte order. It had the jurisdiction to hear the same. Such aspect of the matter as well as the statutory provisions applicable on the subject have completely been ignored by the appellate court, while passing the impugned order.

5. On the cumulative strength of the aforesaid, learned counsel for the revisionist states that the impugned judgment passed by the court below cannot be legally sustained and is liable to be quashed.

6. On the other-hand, learned counsel for opposite party no.2 and the learned A.G.A. for the State have opposed the present criminal revision by submitting that there is no illegality or infirmity in the impugned judgment, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

7. Apart from the above, learned counsel for opposite party no.2 states that the marriage of the revisionist and her husband were solemnized at Sitarganj, Uttarakhand where the cause of action arose. It is further submitted that a first class Magistrate under Section 27 of the D.V. Act within whose local jurisdiction, (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or (b) the respondent resides or carries on business or is employed; or (c) the cause of action has arisen, is competent to grant a protection order and other orders and try the offences under this Act. It is then submitted that in the present case, neither the revisionist nor her husband never resided permanently/temporarily or were employed, within the area of Police Station-Baradari, District at Bareilly, where the revisionist filed compliant under Section 12 of D.V. Act. It is next submitted that under Section 2 (s) of D.V. Act, "share household" has been defined by which a complaint is filed at a place where a household is situated in which the person aggrieved lives or at any stage has lived in a domestic relationship either singally or along with the respondent. However, in the present case the revisionist never lived in a domestic relationship either singally or along with her husband in Baradari, District Bareilly. It is, on the basis of the aforesaid legal proposition of law that the court below has no jurisdiction to try the complaint filed by the revisionist that the appellate court is correct in holding that the Magistrate i.e. court below had no jurisdiction to try the complaint filed by the revisionist under Section 12 of D.V. Act.

Therefore, the appellate court is legally justified in setting aside the order of the court below vide the order impugned. As such, learned counsel for opposite party no.2 submits that the present criminal revision is liable to be dismissed.

8. I have considered the submissions advanced by the learned counsel for the parties and have gone through the records of the present criminal revision.

9. The core issue that is requisite to be addressed before this Court is whether the court below i.e. Civil Judge (Junior Division) F.T.C., Court no.1, Bareilly had jurisdiction to try the complaint filed by the revisionist under Section 12 of D.V. Act or not?

10. On going through the provisions of D.V. Act, this Court is of the opinion that precisely, the object of the D.V. Act is to provide various reliefs to those women, who are or have been in domestic relationships with the abuser, where both the parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or through adoption. Besides, relationships with family members living together as a joint family are also included within the ambit of the D.V. Act. The definition of "domestic violence" as set out in the D.V. Act is very wide and includes any act of physical, sexual, verbal, emotional or economic abuse or threat of such abuse. The D.V. Act provides for various remedies including right of a woman to reside in the matrimonial home or shared household whether or not she has any title or rights in such home or household; protection orders to prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering the work place frequented by the aggrieved person attempting to communicate with her etc. That apart, it also provides for monetary reliefs to meet the expenses incurred or losses suffered by the aggrieved person, as a result of such domestic violence. Besides the aforesaid remedies in civil law, the breach of the protection order by the abuser and failure on the part of protection officer in discharging the duties assigned are made punishable offences under the D.V. Act.

11. This Court is of the opinion that the jurisdiction to entertain and decide a complaint under Section 12 of the D.V. Act be reckoned with reference to Sections 3 and 27 of the D.V. Act alone. Section 27 of the D.V. Act is the sole repository of jurisdiction for an application under Section 12 of the D.V. Act and the Magistrate is the statutorily designated forum to entertain an application under Section 12 of the D.V. Act and also to try offences under the D.V. Act.

12. For appreciating the above issue it would be worthwhile to reproduce Sections 2 (a), (f) and (s), Section 3 and Section 27 of the D.V. Act, which are quoted hereunder:

***"2. Definitions.**-In this Act, unless the context otherwise requires,-*

(a) `aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

x x x

xxxx

(f) `domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

x x x

(s) `shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

"3. Definition of domestic violence.-*For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-*

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.-For the purposes of this section,-

(i) `physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) `sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) `verbal and emotional abuse' includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) `economic abuse' includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any

law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, Stridhana, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her Stridhana or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes `domestic violence' under this section, the overall facts and circumstances of the case shall be taken into consideration."

Section 27 in The Protection of Women from Domestic Violence Act, 2005

27. Jurisdiction

(1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(a) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India."

13. From bare reading of sub-Sections (a), (f) and (s) of Section 2, Section 3 and Section 27 of the D.V. Act, this Court finds that the contours of a domestic relationship, which is a sine-qua-non for definition of "aggrieved person" as laid down in Section 2 (f) make it abundantly clear that the legislature in its wisdom has given a wide definition to domestic relationship to include any relationship between two persons, who either live at the present moment or have at any point of time in the past lived together in a shared household. The relationship between the two persons can be by consanguinity, marriage, a relationship in the nature of marriage, adoption or as family members living together as a joint family. It is pertinent to note that the domestic relationship, as envisaged by Section 2 (f) of the D.V. Act is not confined to the relationship, as husband and wife or a relationship in the nature of marriage, but it includes other relationship as well, such as sisters, mother etc. Thus, merely because the husband and wife or a person living in a relationship in the nature of marriage or the two persons

living together in any other domestic relationship, as envisaged under Section 2 (f) of the D.V. subjected to domestic violence, such a victim of domestic violence shall not cease to be the "aggrieved person" so as to disentitle her from invoking the provisions of the D.V. Act. As a matter of fact, since there cannot be a legal divorce between the persons living in the relationship in the nature of marriage, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the D.V. Act and not to apply the said provisions to the aggrieved person, whose marriage stands dissolved by a decree of divorce prior to coming into force of the D.V. Act will run contrary to the objects sought to be achieved by the D.V. Act. A fortiori, if it was intended by the legislature to provide for the remedy only in respect of the act of domestic violence committed prior to the coming into force of the D.V. Act during the subsisting domestic relationship, the expression "have, at any point of time, lived together" was not required to be used in the definition of "domestic relationship" as incorporated under Section 2 (f) of the D.V. Act. “Shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singally have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

14. Once again, the definition of "shared household" like that of "aggrieved person" and "domestic relationship" is wide in its scope and includes not just the household, where person aggrieved lives at present but also the household where the person aggrieved has at any stage lived in domestic relationship either singally or along with respondent.

15. Coming to the definition of "domestic violence" as set out under Section 3 of the Act, which is vital and germane to issue raised herein, it is to be noticed that "domestic violence" includes within its ambit all kind of violence occurring within the family and the Explanation-I attached thereto enumerates the various kinds of domestic abuse widely prevalent in our country and explains the scope and ambit thereof. The definition of the "domestic violence" has already been quoted above.

16. Even a fleeting glimpse at Section 3 of the D.V. Act as reproduced above reflects that "domestic violence" has been widely defined and it covers within its ambit any act, omission or commission or conduct of the respondent resulting in physical, sexual, psychological and economic abuse or threat of such abuse being inflicted upon a woman who is or has been in domestic relationship with him. Undoubtedly, while the physical or sexual abuse caused by the respondent may be time specific, the emotional abuse caused cannot be time specific and its effects may persist even after the actual occurrence of the act of violence. Rather, the physical or sexual abuse may be the cause of

subsequent psychological and emotional effects.

17. Further, the Explanation II attached to Section 3 of the D.V. Act, which provides that for the purposes of determining whether any act, omission or conduct of the respondent constitutes "domestic violence" under the said Section, the overall facts and circumstances of the case shall be taken into consideration. In this view of the matter, this Court is of the view that where the act of domestic violence on the part of the respondent is specifically pleaded by the aggrieved person, the petition/complaint seeking the relief under the D.V. Act cannot be dismissed at the initial stage and the matter needs to be examined and determined by the Magistrate as mandated under the provisions of the D.V. Act. From a reading of the provisions of the D.V. Act and with understanding of the scheme of the said enactment, it is clear that it is not necessary that the applicant-woman should have a marriage subsisting and existing with the respondent at the time of filing of such application under Section 12 of the Act. No time period is also prescribed in the said Act as to when the aggrieved person should have been in domestic relationship with the respondent. On the other hand, definition of words "domestic relationship" given in Section 2 (f) of the Act clearly uses the words "at any point of time, lived together in a shared household".

18. Section 27 (c) is like an exception to the provisions contained in Section 27 (a) 27 (b) of the Act of 2005. The "cause of action" may not necessarily accrue at a place covered by Section 27 (a) or Section 27 (b) of the Act of the 2005. The provisions contained in Section 27 (a) and Section 27 (b) of the Act are relatable to the principle of territorial jurisdiction, which is the place where the contingencies enumerated in Section 27 (a) and Section 27 (b) of the D.V. Act that may arise within the territorial jurisdiction of a particular Court and that will become the guiding factor for deciding the place of suing by the aggrieved person.

19. From the aforesaid provision, it is apparently clear that it is not necessary for a woman, who is an “aggrieved person” should have resided in a “share household” at the time of filing an application under Section 12 of the D.V. Act as “domestic violence” took place with her by her in-laws or husband or any family members of her-in laws. As per Section 12 of the D.V. Act it is also not mandatory for a Magistrate to consider the domestic incident report of a Protection Officer or any service provider before the passing the order under the Act.

20. The Hon’ble Supreme Court of India in the case of **Prabha Tyagi Vs. Kamlesh Devi** reported in MANU/SC/0631/2022, while answering on the issues framed thereunder, has held in paragraph 52 as follows:

“.....

It is held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the D.V. Act. It is clarified that even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the D.V. Act.

……....

It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.

……..

It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-a-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section of the D.V. Act."

21. With the aforesaid analysis, when the facts of the present case are examined, the Court finds that the revisionist has taken one fold plea for filing the complaint in the competent Court at Bareilly on the ground that the last cause of action has accrued to the revisionist at Bareilly where the revisionist and her family members and the in-laws and their relatives had appeared in a meeting which took place at Bareilly and as per the allegation of revisionist, in such meeting, the in-laws and their relatives had abused the revisionist and her family members.

22. In the case in hand, it is cropped up from the record including the impugned order of the appellate court as well as the trial court that the marriage of the revisionist was solemnized with Sardar Rao Virendra Singh @ Bhola singh on 27th May, 2005 at Sitarganj, Uttarakhand i.e. the parental place of the revisionist. After marriage, the revisionist resided with her husband in her in-laws' house at District Alwar, Rajasthan for some time and thereafter she resided with her husband in another house at Alwar. As per the allegation made by the revisionist that since marriage the husband of the revisionist and mother-in-law Smt. Raghuveer Kaur and her both brother-in-laws, namely, Sardar Surendra Singh and Gurendra Singh used to harass and torture her for additional demand of dowry as they were not satisfied with the dowry given by the parents of the revisionist at the time of marriage. For the said act of her in-laws, the revisionist had made complaint before the Police Station Govindgarh, District Alwar, Rajasthan repeatedly and the last being dated 15th August, 2016. It is also alleged by the revisionist that her two brothers-in-laws had beaten her badly with sticks in which she had sustained head injuries and her treatment was undertaken at Government Hospital, Govindgarh, Alwar, Rajasthan.

23. It is not disputed by the private opposite parties that for some time, the revisionist resided in her in-laws house

along with them where the alleged "domestic" violence started with the revisionist, which is "shared household". In the present case, as per the allegation of revisionist, she is an "aggrieved person"

24. It is also mentioned in the impugned judgment of the appellate court that on 20th September, 2016, the revisionist, her parents and other family members and also the family members came to office of Monitor Patrika of Baradari, Stadium Road, Police Station-Baradari, District Bareilly where a meeting/*'Panchayat'* was fixed in which her in-laws along with some known persons armed with weapons. During the meeting, at around 07:00 p.m. all the members of her in-laws started to abuse the revisionist and her father that unless they does not fulfil the additional demand of dowry of Rs. 50,000/-, they would not take her at her in-laws' place. From the aforesaid it is crystal clear that last cause of action accrued to the revisionist at Bareilly.

25. Before this Court on the issue in hand, no direct settled law has been placed by either of the parties. However, upon bare reading of sub-Sections (a), (b) and (c) of Section 127 Cr.P.C. altogether, this Court is of the opinion that the application filed by the revisionist under Section 12 of the D.V. Act before the Civil Court at Bareilly on the ground of arising of last cause of action with the revisionist by the opposite parties is maintainable.

26. Upon deeper scrutiny of the impugned order passed by the appellate Court, this Court finds that the court below has erred in law in allowing the appeal filed by the opposite party no.2. The appellate court has not recorded any specific finding regarding the material on the record on the basis of which it came to the conclusion that the court at Bareilly has no jurisdiction to try the complaint. The appellate court completely ignored the distinction between the provisions of Section 27 (a) as well as Section 27 (b) on the one hand and Section 27 (c) on the other hand.

27. Under such circumstances, this Court finds that the impugned order dated 16th November, 2023 passed by the appellate court cannot be legally sustained and is hereby quashed. There is no illegally or infirmity in the order passed by the Civil Judge (Junior Division), Fast Track Court, Court No.1, Bareilly dated 8th September, 2021, which is competent to grant protection order in view of Section 27 (c) of D.V. Act, so as to warrant any interference by this Court while exercising its revisional jurisdiction. The order of the Civil Judge dated 8th September, 2021 is, hereby, affirmed.

28. However, it is clarified that except the issue of maintainability of the complaint under Section 12 of the D.V. Act before the Civil Court, Bareilly, which has been decided by the appellate court against the revisionist holding that the Magistrate concerned has no jurisdiction to entertain the same, this Court is not expressing any opinion on the other issues. Any observations made by this Court herein above shall not adversely affect the rights of the parties to raise before the court below except the issue of jurisdiction of the Magistrate concerned to try the complaint made by the revisionist under Section 12 of the D.V. Act. It shall be open for the parties to raise issues, which has not ben decided by this Court before the court concerned as may be permissible under law.

29. The present criminal revision is, accordingly, allowed.

30. There shall be no order as to costs.

(2025) 9 ILRA 1173
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.09.2025

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Revision No. 3080 of 2025

Chandra Shekhar Tiwari & Ors.
...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionists:
Ramanuj Yadav

Counsel for the Opposite Parties:
G.A., Phool Singh Yadav, Vaibhav Yadav

ISSUE FOR CONSIDERATION

Whether the trial court rightly exercised its power under Section 319 CrPC to summon the revisionists, who were initially exonerated during investigation, based on the deposition of PW-1 and PW-2.

Whether reliance solely on witness testimony, despite lack of incriminating material in the investigation, is legally sustainable.

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections - 193, 200, 201, 202, 300, 319, 398 - Indian Penal Code, 1860 - Section 147, 201, 302, - Indian Evidence Act, 1872 - Section 6 - Criminal Revision – against the impugned order passed by the Sessions Judge in Sessions Trial, arising out of Case Crime under Sections 147, 302, 201 IPC, pursuant to an application under Section 319 CrPC – matrimonial dispute – FIR - offence of murder - alleged that the deceased was beaten, tied, and strangulated by the accused including the revisionists, though initially exonerated by the Investigating Officer – Court emphasized that under Section 319 CrPC, wide discretionary power exists to summon additional accused during inquiry or trial based on evidence recorded in court, even at the stage of examination-in-chief without waiting for cross-examination, provided the material is stronger than a mere prima facie case but short of conviction certainty – further observed that trial evidence has primacy over investigation materials, which may only serve as corroboration, and res gestae principles under Section 6 of the Evidence Act allow facts forming part of the same transaction to be admissible – relying on *Hardeep Singh*, *Brijendra Singh*, and *Satbir Singh*, the Court held that there were sufficient evidence beyond a mere prima facie case to justify summoning on record, therefore, the impugned order summoning the revisionists under Sections 147, 302, 201 IPC is affirmed and the criminal revision is stands dismissed. (Para – 23, 24, 25, 26, 27, 28)

Revision Dismissed. (E-11)

CASE LAW CITED

Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 / (85) ACC 313

Dharam Pal v. State of Haryana, (2014) 3 SCC 306

Brijendra Singh & Others v. State of Rajasthan, (2017) 7 SCC 706

Satbir Singh v. Rajesh Kumar & Others, (2025) 5 SCC 740

State of U.P. v. Bashisht Rai & Others, 2006 (5) ALJ (NOC) 902 (All)

LIST OF ACTS

Code of Criminal Procedure, 1973 - Indian Penal Code, 1860 - Indian Evidence Act, 1872

LIST OF KEYWORDS

Criminal Revision - cognizance by Sessions Court - Inquiry - Summoning additional accused - Summoning of accused - Power of Sessions Judge to order inquiry - Causing disappearance of evidence - Prima facie case - Ocular evidence - Res gestae - Investigation vs. trial evidence - Murder by strangulation.

CASE ARISING FROM

Case Crime No. 85 of 2022, Police Station Punchha, District Jhansi - Sessions Trial No. 960 of 2022 (State v. Sunil Tiwari & Others) - Criminal Revision No. 3080 of 2025 against

order dated 28.05.2025 of Sessions Judge, Jhansi.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ramanuj Yadav
Counsel for Respondent(s): Shri Phool Singh Yadav, Vaibhav Yadav, A.G.A., Shri Akhilesh Kumar Mishra

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. This criminal revision is directed against the order dated 28.5.2025 passed by the learned Sessions Judge, Jhansi in S.T. No. 960 of 2022 (State Vs. Sunil Tiwari and others) arising out of Case Crime No. 85 of 2022 under sections 147, 302, 201 IPC, Police Station Punchha, District Jhansi whereby the Application 33-B under section 319 Cr.P.C. moved by the prosecution was allowed and the revisionists were summoned to face trial for the said offences.

2. Heard Shri Ramanuj Yadav, learned counsel for the revisionists, Sri Phool Singh Yadav, learned counsel for the opposite party no.2 and Shri Akhilesh Kumar Mishra, learned A.G.A. for the State.

3. The brief facts of the case, as unfolded in the F.I.R., are as follows :

On 9.5.2022 at about 9.00 p.m. Dipendra Yadav @ Deepu, brother of the informant, had gone to attend the marriage ceremony of Lokendra Singh Yadav's nephew to village Madora Khurd and a quarrel started there between Lokendra Singh Yadav, Amit Tiwari, Anuj and Deepu and thereafter, Chandra Shekhar Tiwari, Lokendra Singh Yadav, Amit Tiwari, Anuj Pandey, Sanchit Yadav, Sunil Tiwari tied his brother to a pillar of Chandra Shekhar Tiwari's verandah and he was beaten by them. When brother of the informant did not return home till evening, he was searched for but not found anywhere and the above mentioned people kidnapped him and made him disappear. On 10.5.2022 at 11.30 a.m. his body was found hanging on a tree at a deserted place on the highway, which was hung after committing his murder by the said accused persons. The incident was witnessed by Avadhesh Yadav. F.I.R. was lodged on 12.5.2022 at 11.35 a.m. under Sections 147, 302, 201 IPC.

4. It is submitted by learned counsel for the revisionists that although the present revisionists were named accused in the F.I.R. but the Investigating Officer of this case found absolutely no evidence disclosing their involvement during investigation hence they were exonerated by the Investigating Officer, however charge sheet was submitted only against the accused Sunil Tiwari.

5. Further argument is that the story set up by the prosecution is false and fabricated. The informant/PW-1 is not an eye witness of the occurrence and some major contradictions are clearly visible in his statement in examination-in-chief and cross-examination which makes his deposition inconsistent and unreliable. It is also submitted that it is explicitly clear from the record that the I.O. of this case found absolutely no evidence against the present revisionists and that was the reason they were exonerated and no charge sheet was submitted against them.

6. Another limb of the argument is that the PW-1 and PW-2 have made relevant improvements in their deposition recorded before the Court. The present revisionists are innocent and they have been falsely

implicated in this matter. They were not present on the spot at the time of the incident. It is further submitted that though it has been alleged in the F.I.R. that the deceased was assaulted by the accused persons but no injury is found on his body in the post mortem report and the cause of death was found asphyxia due to ante mortem strangulation.

7. It is also urged that the trial court must have taken into account the statements recorded by the I.O. and materials collected by him during investigation. Hence, the trial court on the basis of shaky and inconsistent oral testimony of the witnesses, which is full of material contradictions, passed an arbitrary and illegal order to summon the revisionists to face trial under Sections 147, 302, 201 IPC which suffers from infirmity and perversity warranting interference by this Court.

8. Per contra, learned A.G.A. and learned counsel for the opposite party no.2 / informant vehemently opposed the prayer and it has been submitted that the present revisionists were named in the F.I.R. of this case and role of assault has also been attributed to them. However, some witnesses were won over by them during investigation. Two witnesses of fact have been examined before the trial court and both of them have proved the active participation of the present revisionists in the commission of the alleged crime. It is further submitted that even if it is presumed that PW-1 was not present on the place of occurrence at the time of incident but the F.I.R. version has been firmly corroborated by the eye witness - PW-2 and he has assigned specific role of assault to all the revisionists alongwith other co-accused Sunil Tiwari. It is also submitted that while deciding the application under Section 319 CrPC the Court must take into consideration the entire testimony of the witnesses recorded before the Court. The trial court relying upon the evidence of PW-1 and PW-2, which corroborates the F.I.R. version and on being satisfied that there is sufficient material to summon the present revisionists to face trial for the relevant offences, summoned them accordingly. There are no material contradictions in the statements of PW-1 and PW-2 in respect of complicity of the present revisionists in the incident. It is also submitted that the medical evidence fully corroborates the prosecution version. The trial court has not committed any irregularity, illegality or impropriety in passing the impugned order.

9. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

10. A perusal of the material available on record transpires that PW-1 - Krishna Kumar (informant), PW-2 - Awadhesh Kumar (eye witness) were examined before the trial court and at that stage an application under Section 319 CrPC to summon the present revisionists to face trial for the offences under Sections 147, 302, 201 IPC was moved by the informant. The trial court relied upon the statement of PW-1, the informant, who in his examination-in-chief supported the prosecution story and stated that Avadhesh witnessed this incident on the spot and told him. He is not an eye witness of the incident. PW-2 - Awadhesh Kumar naratting the incident corroborates the prosecution version and gave ocular evidence of the occurrence in his

examination-in-chief and it was added by him that all the accused persons Chandra Shekhar Tiwari, Lokendra Singh Yadav, Amit Tiwari, Anuj Pandey, Sanchit Yadav and Sunil Tiwari were beating Deepu with lathi, danda, kicking and fisting and they dragged him into the gate of Chandrashekar Tiwari and when he tried to mitigate, he was threatened to leave the place. The trial court finding a prima facie case against the revisionists allowed the application of the informant and all the revisionists were summoned to face trial for the offence Sections 147, 302, 201 IPC vide impuged order alongwith the accused Sunil Tiwari, who was already facing the trial.

11. The latest law over the subject is **Satbir Singh vs. Rajesh Kumar and others, (2025) 5 SCC 740** wherein reiterating the established law rendered by the Constitution Bench in **Hardeep Singh Vs. State of Punjab and others, 2014(85)ACC 313,** the Hon'ble Apex Court in paragraph 16 of the said judgment explained the law over the subject relying upon the Constitution Bench decision in **Hardeep Singh case** (supra) and quoted the conclusions arrived at by the Hon'ble Supreme Court qua the questions arising for consideration and decision and it was quoted as under :

"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] , 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 [In para 106, the Court held : [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, SCC p. 138, para 106]"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 319CrPC."] . 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."

12. In the case in hand also the impugned order passed by the trial court is needed to be examined in the light of the aforesaid settled law with a caution that any observation may not make any influence upon the trial.

13. Further, the Courts' power for invoking under Section 319 Cr.P.C. with regard to the accused, who is not named in the F.I.R. or if named, no charge-sheet was submitted against him or even he has been discharged by the Court is well recognized. At the stage of inquiry when the Court uses its power for the aforesaid purpose, it may take into consideration all the materials collected by the Investigating Officer during investigation or even the statement recorded under sections 200 and 202 Cr.P.C., as the case may be, and it acts at a pre-congnizance stage of the matter before filing the charge-sheet by the police. However, after submission of the charge-sheet and after framing of charges when the trial commences and evidence of witnesses is recorded, the trial court may pass an order under Section 319 CrPC to summon a person as co-accused alongwith the accused persons who are already facing trial and at this stage no extraneous material is to be looked into or considered by the trial court except the deposition of the witnesses recorded before the Court.

14. It is vehemently argued by the learned counsel for the revisionists that during investigation the I.O. collected absolutely no evidence against the revisionists and the trial court was not empowered to replace the evidence recorded during trial where it found some materials adverse to the revisionists by totally ignoring the evidence collected during investigation and if evidence and materials collected during investigation by the I.O. are also considered the situation turns in support of the revisionists and the trial court commits a legal error in totally discarding the evidence which was found during investigation.

15. To diminish the aforesaid plea the observations made in **Hardeep Singh** case (supra) and another landmark judgment in **Brijendra Singh & others Vs. State of Rajasthan, 2017(7) SCC 706** are also to be taken support of which authoritatively pronounce that the trial court must keep attention to the fact that the material and evidence collected during investigation which corroborates the prosecution story only can be taken cognizance of for the purpose of summoning the accused under Section 319 CrPC and the principle which emerges out from the judgments of **Hardeep Singh case** and **Brijendra Sing case** (supra) is that the statement and evidence recorded and collected by the I.O. during investigation may always be taken as a corroborative piece of evidence by the Courts during trial. This is the evidence recorded before the Court which always finds preference and supremacy over the evidence collected by the I.O. during investigation.

16. If on the basis of aforesaid legal position the oral evidence recorded before the Court is examined it is crystal clear from the deposition of PW-1 and PW-2 that they have deposed that accused persons Lokendra Singh Yadav, Amit Tiwari, Anuj Pandey started altercation with Dipendra Yadav @ Deep Yadav and subsequently accused Chandra Shekhar Tiwari, Lokendra Singh Yadav, Sunil Tiwari, Amit Tiwari tied the deceased Dipendra , the brother of

the informant, with a pole and made assault upon him. Although PW-1 is not the eye witness of the incident but he has named Awadhesh Singh as eye witness of the incident and the said Awadhesh Singh, who appeared as PW-2, has stated before the Court in his deposition, the ocular evidence of the matter and he has named all the six persons who also find place in the statement of PW-1 to commit the crime jointly. The prosecution story set up in the F.I.R. finds full corroboration by the deposition of PW-1 and PW-2.

17. The dictum of law promulgated by the Hon'ble Supreme Court in the judicial pronouncement may be summarized as mentioned hereinafter and it can be safely held that the Court during trial is justified to look into the materials collected during investigation by the Investigating Officer but however such materials and evidence can be used only for corroboration of the evidence recorded in the Court after the trial commences for the exercise of power under section 319 Cr.P.C.

18. A specific plea has been taken by the learned counsel for the revisionist to assail the impugned order that in the post mortem report of the deceased besides a ligature mark only one injury has been found below the left ear of the deceased by the doctor whereas as per the prosecution case several accused persons had beaten him. Hence the prosecution story is highly suspicious and it was not probable that if a person is being beaten by many persons how he could sustain only one injury over his body.

19. To meet out the aforesaid submission, learned counsel for the opposite party no.2 and the learned AGA vehemently contended that besides the ligature mark one other injury was found over the body of the deceased which was "Upward and backward along the line of mandible ligature mark, situated 6 cm below right ear, 6 cm below chin, 5 cm below left ear."

It is also submitted that the injuries sustained by the deceased may be explained at the proper stage of trial before the trial court. It is further submitted that in the autopsy report cause of death of the deceased has been found asphyxia due to ante mortem strangulation.

20. In this backdrop, the oral evidence on record was examined by this court. The present revisionists, who are named in the F.I.R., have been specifically named by PW-2, the eye witness of this case, and he has assigned role of assault upon the deceased Deepu Yadav to all of them by use of lathi, danda, kicking and fisting and further he has stated that after beating him he was tied by the revisionists and was forcefully dragged into the gate of the house of Chandra Shekhar Tiwari and when he tried to persuade the matter, Chandra Shekhar Tiwari, revisionist no.1, threatened him to leave the place at once and he (PW-2) left the place of occurrence and subsequently the dead body of Deepu was found hanging in a tree. He further states that his dead body was hidden somewhere in the house and in the night the revisionists / accused persons took the dead body of the deceased and hanged it from a tree. The said statement made on oath by PW-2 before the Court is found in tact and consistent if it is examined on the face of his entire deposition including the cross-examination. Awadhesh Kumar - PW-2 appears to be an innocent witness, who had no reason to falsely implicate the revisionists in the offence of murder. He

has also stated that for about five minutes the deceased was beaten by the accused persons but no assault by use of 'lathi' was made by them. It is true that the dead body of the deceased was not hanged before this witness but since the incident of assault upon the deceased has been strongly corroborated by this witness, it can be easily inferred prima facie that the revisionists were the persons who hanged the dead body of the deceased on tree. In fact the entire deposition of PW-2 is relevant taking recourse of Section 6 of the Evidence Act also, which is based upon the theory of res gestae evidence. The said Section 6 reads as under :

"Section 6. Relevancy of facts forming part of same transaction - Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

21. In **State of U.P. vs. Bashisht Rai & others, 2006(5) ALJ (NOC) 902 (All),** this Court has held that for application of Section 6 of the Evidence Act it is necessary that fact must not be too remote but a part of single transaction. Whatever is stated by eye witness to murder immediately after incident as to participation of accused would be res gastae evidence, same would be admissible in evidence under Section 6.

22. PW-2, the eye witness, although in his initial deposition has stated that assault was made by use of lathi, danda, kicking and fisting but however further he clarifies that lathi was not used during incident. The contention raised by the learned counsel for the revisionists regarding the injuries sustained by him is a fact which can be explained only after recording the evidence and at this stage this Court does not need to go into deep in marshaling the evidence recorded before the Court.

23. It is a trite law, particularly after the pronouncement of the judgment of the Hon'ble Supreme Court in the case of **Hardeep Singh** (supra) and further reiterated in **Brijendra Singh case** (supra) and very recently in the case of **Satbir Singh** (supra) that an effective order under Section 319 Cr.P.C. may very well be passed by the trial court relying only on the statement made by a witness in his examination-in-chief and there is no need to wait for the cross-examination of such witness which makes the prosecution easy to move an application under Section 319 Cr.P.C. and to force the court to rely upon the same.

24. It is on the touchstone of the settled law, this Court has examined the correctness and validity of the impugned order passed by the learned Sessions Court. There is constant and reliable ocular evidence of PW-2 on record to show the complicity of the revisionists in the alleged occurrence alongwith the accused who is already facing the trial. They all were alleged to have participated in the commission of crime altogether having same role. Hence, the revisionists could safely be tried together with the accused Sunil Tiwari.

25. Now it is trite law particularly after the judgment of Hon'ble Supreme Court passed in **Hardeep Singh** (supra) case that since the Court exercises discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction for the role played by the proposed accused and the test that has to be

applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.

26. On the basis of aforesaid discussion, in the peculiar facts and circumstances of the case, this Court is of the view that the impugned order is sustainable. The evidence on record which was recorded before the trial court definitely makes out a prima facie case against the proposed accused persons which is more than a prima facie case as exercised at the time of framing of charge but less than such a satisfaction that the evidence, if goes unrebutted, would lead to conviction. From the entire testimony of PW-2 prima facie it appears that the accused persons / revisionists also have played an active role in commission of the crime and the Court concerned committed no mistake to summon them to face trial for the offence under Sections 147, 302, 201 IPC.

27. In view of the above discussion, in my view, there is no infirmity, illegality, perversity or lack of judicial mind in the impugned order dated 28.5.2025 and the said order is liable to be affirmed and the criminal revision deserves to be dismissed.

28. The criminal revision is accordingly **dismissed**. The impugned order order dated 28.5.2025 passed by learned Sessions Judge, Jhansi in S.T. No. 960 of 2022 (State Vs. Sunil Tiwari and others) arising out of Case Crime No. 85 of 2022 under sections 147, 302, 201 IPC, Police Station Punchha, District Jhansi is affirmed.

29. Copy of this order be sent to the court concerned for compliance and necessary action.

(2025) 9 ILRA 1181
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.09.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Revision No. 6391 of 2023

Ramnarayan Ram Daroga & Ors.
...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionists:
Byas Kumar Prasad, Suresh Kumar Yadav

Counsel for the Opposite Parties:
Balbir Singh, G.A., Sukhendu Pal Singh

Issue for Consideration

Determination of the scope of 'Evidence' mentioned under Section 319 of the Criminal Procedure Code, 1973. Whether this term includes the materials contained in the chargesheet or the case diary? Whether the power to summon an additional accused under Section 319 Cr.P.C. can be exercised in routine manner?

Headnotes

Code of Criminal Procedure, 1973 – s. 156(3) - application to a Magistrate to order the police to register an FIR and investigate - s. 319 - Power to proceed against other persons appearing to be guilty of offence – scope of evidence – limited to trial – exclusion of materials contained in chargesheet or case diary –

whether more than prima facie case is made out or not – instant revision allowed Held:

Section 319 of the Criminal Procedure Code - 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 - trial court is empowered to summon a person to face trial, who is not the accused in the case on the basis of the evidence – the Apex Court in *Hardeep Singh Vs. State of Punjab & Others; Omi @ Omkar Rathore Vs. State of Madhya Pradesh and Another; and Brijendra Singh & Others Vs. State of Rajasthan* held trial court should consider the statements of the witnesses adduced before it and it should not place reliance upon the material available in the charge-sheet or the case diary. [Para 18-23]

For summoning of an accused under Section 319 Cr.P.C. - power is an extraordinary power, be used sparingly with circumspection and court must consider whether more than prima facie case is made out, or not. It is to analyze, whether before the trial court material was sufficient to summon the revisionists under Section 319 Cr.P.C. or not. The impugned order dated 30.10.2023 does not reflect that the trial court recorded any finding, whether more than prima-facie case is made out or not against the revisionists as well as there was an inordinate delay of three months in lodging the FIR and the statements of P.W.-1, P.W.-2 and P.W.-3 recorded before the trial court do not appear to be of such quality. [Paras 24, 26, and 27]

Therefore, the impugned order dated 30.10.2023 is illegal and hereby set aside. Instant revision stands **allowed**. (E-14)

Case Law Cited

Omi @ Omkar Rathore Vs. State of Madhya Pradesh and Another 2025 INSC 27 and Shiv Baran Vs. State of Uttar Pradesh and Another, 2025 in Criminal Appeal No.3008 of 2025 (Arising out of SLP (Criminal) No.3993 of 2025 – referred to; Hardeep Singh Vs. State of Punjab & Others (2014) 3 SCC 92 – applied.

Lists of Acts/Statutes

Criminal Procedure Code, 1973; Indian Penal Code, 1860.

List of Keywords

Criminal Revision; inordinate delay in FIR; summon under s, 319 CrPC; scope of s. 319 Cr.P.C.; evidence adduced in trial; more than prima facie case is to be made out; illegal and hereby set aside.

Case Arising From

Criminal Case No. 1697 of 2011 instituted in the Court of Chief Judicial Magistrate, Chandauli arising out of Case Crime No. 48 of 2011. The aforesaid court has summoned the revisionist vide order dated 30.10.2023 under s. 319 CrPC. The said impunged order dated 30.10.2023 is challenged by way of this revision.

Appearance of Parties

Counsel for Revisionist: Byas Kumar Prasad, Suresh Kumar Yadav

Counsel for Opposite Party: Balbir Singh, G.A.; Sukhendu Pal Singh

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

1. Heard Sri Byas Kumar Prasad, learned counsel for the revisionists, Sri Pradeep Kumar, learned A.G.A. for the State-respondent and Sri Sukhendu Pal Singh, learned counsel for the opposite party no.2.

2. The instant criminal revision has been filed by the revisionists to set-aside the impugned order dated 30.10.2023

passed by Chief Judicial Magistrate, Chandauli in Criminal Case No.1697 of 2011 (State vs. Mithai Lal) arising out of Case Crime No.48 of 2011 by which they have been summoned to face trial under Sections 147, 148, 149, 323, 504, 506, 427 I.P.C., Police Station Mughal Sarai, District Chandauli.

Brief facts of the case:-

3. FIR of the present case was lodged on 12.02.2011 against revisionists and six others with regard to the incident dated 12.11.2010 for offences under Sections 147, 148, 149, 323, 325, 504, 506, 395, 452, 427, 341, 342 I.P.C. through an application under Section 156(3) Cr.P.C. dated 08.12.2010 and according to the FIR, revisionists and six others made assault and due to the assault made by them, wife of the opposite party no.2 and his two sons sustained injuries.

4. After registration of the FIR, investigation was conducted and during investigation involvement of the revisionists were found false and charge-sheet has not been filed against them but during trial, on the basis of the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3, revisionists have been summoned by the trial court under Section 319 Cr.P.C. vide impugned order dated 30.10.2023. Hence, the instant revision.

Argument advanced on behalf of the revisionists:-

5. Learned counsel for the revisionists submits that impugned order dated 30.10.2023 passed by the trial court is illegal as while summoning the revisionists under Section 319 Cr.P.C. trial court did not record any finding that more than prima-facie case is made out against the revisionists, which was necessary to summon them under Section 319 Cr.P.C.

6. He further submits that even it reflects, FIR of the present case was lodged after two months through an application moved under Section 156(3) Cr.P.C and even application under Section 156(3) Cr.P.C was moved after about one month. He next submits, even P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 in their statements recorded before the trial court stated that incident occurred on 12.11.2010 but while passing the impugned order, court concerned did not consider this fact and in routine manner summoned the revisionists under Section 319 Cr.P.C.

7. He next submits that however an additional accused can be summoned under Section 319 Cr.P.C. on the basis of the evidence laid before the trial court but before summoning him, it is the duty of the trial court to consider the other relevant factors including the material available on record collected by the I.O. during investigation.

8. He next submits that however power to summon an additional accused under Section 319 Cr.P.C. is discretionary power but the same cannot be exercised in routine manner and this power should be exercised sparingly only in appropriate cases, where there is strong evidence to summon such accused .

9. He further submits that in the present matter even from the statements of the witnesses recorded before the trial court, it reflects, they very casually disclosed the name of the revisionists and their testimonies were not of such quality on the basis of which revisionists should be summoned under Section 319 Cr.P.C.

10. He next submits that therefore, impugned order dated 30.10.2023 passed by the court concerned is illegal and is liable to be set aside.

Argument advanced on behalf of the State and Opposite Party No.2:-

11. Per contra; learned A.G.A. as well as learned counsel for the opposite party no.2 vehemently opposed the prayer and submit that from the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 recorded before the trial court, it is apparent that they specifically disclosed the name of the revisionists and from their statements, it is also apparent that more than prima-facie case is made out against them and therefore, while summoning them under Section 319 Cr.P.C . court concerned did not commit any illegality.

12. They further submit that law is settled that while summoning an accused under Section 319 Cr.P.C., trial court should consider only the statements of the witnesses recorded before it and trial court cannot consider the material/statements collected/recorded by the I.O. during investigation.

13. Learned counsel for the opposite party no.2 placed reliance on the judgments of the Apex Court passed in the case of ***Omi @ Omkar Rathore Vs. State of Madhya Pradesh and Another 2025 INSC 27 and Shiv Baran Vs. State of Uttar Pradesh and Another decided on 16th July, 2025 in Criminal Appeal No.3008 of 2025 (Arising out of SLP (Criminal) No.3993 of 2025.***

14. He further submits that P.W.-2 and P.W.-3 are injured witnesses and therefore, their statements recorded before the trial court cannot be disbelieved and as they categorically stated that revisionists participated in the incident, therefore, trial court rightly summoned them under Section 319 Cr.P.C..

15. He further submits that therefore instant revision is devoid of merit and is liable to be dismissed.

Analysis and conclusion:-

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

17. In the instant revision, revisionists challenged the order dated 30.10.2023 passed by the trial court by which they have been summoned under Section 319 Cr.P.C.

18. Section 319 Cr.P.C. read as 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 afresh, and 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."

19. Therefore, from Section 319 Cr.P.C., it is apparent that trial court is empowered to summon a person to face trial, who is not the accused in the case on the basis of the evidence. The word 'evidence' used in Section 319 Cr.P.C. is significant. Th Constitution Bench of the Apex Court in case of ***Hardeep Singh Vs. State of Punjab & Others (2014) 3 SCC 92*** held that the word 'evidence' used in Section 319(1) Cr.P.C. indicates, the word 'evidence' is limited to the evidence recorded during trial.

20. The Apex Court in case of ***Omi @ Omkar Rathore (supra)*** also held that trial court can add an individual as accused only on the basis of the evidence adduced before it and not on the basis of the materials available in the charge-sheet or the case diary because such materials contained in the charge-sheet or the case diary do not constitute evidence.

21. The Apex Court in the case of ***Shiv Baran (supra)*** also held that trial court can exercise power to summon an additional accused under Section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation.

22. The Apex Court in case of ***Brijendra Singh & Others Vs. State of Rajasthan (2017) 7 SCC 706,*** observed that however, the word 'evidence' used in Section 319 Cr.P.C. means, the material brought before the court during trial but evidence collected by the I. O. can be utilized for corroboration.

23. Therefore, from the above dictum of the Apex Court, it is apparent that while invoking power under Section 319 Cr.P.C. trial court should consider the statements of the witnesses adduced before it and it should not place reliance upon the material available in the charge-sheet or the case diary.

24. The law with regard to the summoning of an accused under Section 319 Cr.P.C. is settled that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under Section 319 Cr.P.C. court must consider whether more than prima-facie case is made out, or not. For summoning an additional accused under Section 319 Cr.P.C. mere prima-facie case is not sufficient. ***[See: Constitution Bench judgment of Apex Court Hardeep Singh (surpa)]***. Therefore, in light of the above principles, it is to analyze, whether before the trial court material was sufficient to summon the revisionists under Section 319 Cr.P.C. or not.

25. From the impugned order dated 30.10.2023 passed by the trial court it

reflects before it statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 have been recorded and P.W.-2 and P.W.-3 are the injured witnesses of the case and these witnesses stated that on 12.11.2010, revisionists along with others made assault due to which, three persons sustained injuries including Bahadur Sonkar (P.W.-2) and Lilly Sonkar (P.W.-3) but it reflects that FIR of the present case was lodged on 12.02.2011 i.e. after three months through an application under Section 156(3) Cr.P.C. and even application under 156(3) Cr.P.C. was moved on 8.12.2010 i.e. after one month, therefore, there is inordinate delay in lodging the FIR of the present case. It reflects while summoning the revisionists under Section 319 Cr.P.C. court concerned did not consider this fact.

26. Further, from the impugned order dated 30.10.2023, it could not be reflected that trial court recorded any finding, whether more than prima-facie case is made out or not against the revisionists, which was necessary in the light of the law laid down by the Constitution Bench of Supreme Court in case of ***Hardeep Singh (supra).***

27. Further, after considering the fact that there is inordinate delay in lodging the FIR, the statements of P.W.-1, P.W.-2 and P.W.-3 recorded before the trial court do not appear to be of such quality on the basis of which, revisionists should be summoned by exercising power under Section 319 Cr.P.C. as from their statements, it could not be reflected that more than prima-facie case is made out against them.

28. It reflects from the impugned order dated 30.10.2023 that without properly analyzing the facts and circumstances of the case, trial court blindly accepted the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 and summoned the revisionists under Section 319 Cr.P.C., which was not permissible.

29. Therefore, from the discussion made above, in considered view of this Court, impugned order dated 30.10.2023 is illegal and is liable to be set-aside.

30. Accordingly, impugned order dated 30.10.2023 is hereby set aside. Instant revision stands **allowed**.

(2025) 9 ILRA 1186
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Government Appeal Defective No. 421 of 2025

State of U.P. ...Appellant
Versus
Ajeet S/o Omveer ...Respondent

Counsel for the Appellant:
Patanjali Mishra

Counsel for the Respondent:

ISSUE FOR CONSIDERATION

Whether the trial court's acquittal of accused Ajeet in Sessions Trial arising out of case crime under Sections 376, 323 IPC and Section 3/4 POCSO Act was justified, and if the High Court should grant leave to appeal against the acquittal.

HEADNOTES

Criminal Law – Criminal Procedure Code, 1973 – Sections 161, 164, 173(2) - Indian Penal Code, 1860 – Sections 376, 323, - Protection of Children from Sexual

Offences (POCSO) Act, 2012 - Section 3, 4 - Defective Government Appeal - challenging the acquittal of accused in Sessions Trial - under Sections 376, 323 IPC and Section 3/4 POCSO Act – Trial court acquitted accused on benefit of doubt as victim retracted allegations, eyewitnesses turned hostile, and medical evidence was inconclusive - Appeal against acquittal – scope of High Court's interference – State argued that, trial court erred by giving undue weight to contradictions and ignoring victim's earlier statements under Sections 161 and 164 Cr.P.C. – The Court, after considering submissions and reviewing the record, emphasized the settled legal principles governing appeals against acquittal referring to precedents such as *Bannareddy v. State of Karnataka* (2018), *Jayamma v. State of Karnataka* (2021), *Virendra Singh v. State of U.P.* (2022), and *Rajesh Prasad v. State of Bihar* (2022), - Court further reiterated that, court should not reappreciate evidence unless the trial court's findings suffer from grave infirmities and acquittals should not be overturned merely on minor contradictions when the prosecution case itself is riddled with inconsistencies – the trial court's acquittal was held to be a possible and reasonable view, which could not be substituted by the High Court - Accordingly, the application for leave to appeal was rejected - and as a consequence, the government appeal was dismissed.(Para – 16, 17, 18)

Govt. Appeal Dismissed. (E-11)

CASE LAW CITED

Bannareddy and others v. State of Karnataka (2018) 5 SCC 790

Jayamma v. State of Karnataka (2021) 6 SCC 213

Virendra Singh v. State of U.P. and others (2022) 3 ADJ 354 DB

Rajesh Prasad v. State of Bihar and another (2022) 3 SCC 471

LIST OF ACTS

Criminal Procedure Code, 1973 – Indian Penal Code, 1860 – Protection of Children from Sexual Offences (POCSO) Act, 2012.

LIST OF KEYWORDS

Appeal against acquittal - voluntarily causing hurt – rape – trial – acquittal - Benefit of doubt - Hostile witnesses - Victim testimony retraction - Medical evidence inconclusive - Leave to appeal - Government appeal.

CASE ARISING FROM

Sessions Trial No.354 of 2019, *State of U.P. v. Ajeet and others* - Arising out of Case Crime No.113 of 2019, Police Station Amaopur, District Kasganj - Judgment dated 6.2.2025 by Special Judge (POCSO Act), Kasganj.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Rakesh Pandey sr. Adv. assisted by Shri Nitin Sharma.

Counsel for Respondent(s): Shri Chandan Singh AGA and Shri Manish Singh.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

Order on Criminal Misc. Delay Condonation Application No. NIL of 2025.

Heard Mr. Rahul Asthana, learned AGA appearing for the State.

A delay of 103 days has been reported.

Perused the affidavit in support of the delay condonation application, which in our opinion is satisfactorily explained.

The application is **allowed**.

Order on Leave to Appeal Application No.Nil of 2025.

Heard Mr. Rahul Asthana, learned AGA appearing for the appellant-State of UP and perused the record.

Present government appeal has been preferred against the judgement and order dated 6.2.2025 passed by the learned Special Judge (POCSO Act), Kasganj in Sessions Trials No. 354 of 2019, State of U.P. Versus Ajeet and others, (arising out

of Case Crime No. 113 of 2019), under Sections 376, 323 IPC and Section ¾ POCSO Act, Police Station Amaopur, District Kasganj.

Factual matrix of the case is that on 29.07.2019 at about 1.30 P.M. informant's minor daughter aged about 16 years went from home to maize field to defecate. On reaching the maize field, accused Ajeet arrived there and caught hold the informant's daughter and established physical relation with her and also beaten her. It is also narrated that this incident was witnessed by Prem Pal, Subhash, Sunil and Santosh. It is also mentioned that at the time of alleged incident informant was present at Etah District to look after her mother, but when she back to home her victim daughter told the whole incident to her. Thereafter, informant alongwith her victim daughter went to police station, where she presented a *written tahreer*, on that basis, the first information report has been lodged against the accused Respondent-Ajeet on 29.07.2019 at 13.30 hrs.

During investigation, Investigating Officer visited the place of occurrence and prepared the site plan and recorded the statement of the witnesses and after collecting the evidence against the accused-respondent submitted a police report, under Section 173(2) Cr.P.C before the Court concerned. Charge for the aforesaid offences was framed and read over to accused respondent who denied the prosecution allegation and claim to be tried.

In support of prosecution case, witnesses PW-1 Victim, PW-2 Smt. Umesha, PW-3 Ashok and PW-4 Dr. Love Kumar Chhatwal, PW-5 HC 294 Mridul Pratap Singh, PW-6 Dr. Sandesh Aarekh, PW-7 Inspector Virendra Singh Indaulia, PW-8 Prempal, PW-9 Atendra, PW-10 Sunil, PW-11 Subhash, PW-12 Mordhawaj Singh and PW-13, Dr. Khalid Salman were produced and examined before the Court below.

The judgement of the acquittal passed by the learned trial Court on the ground that the victim was stated to be about 18 to 21 years of her age at the time of alleged incident i.e. on 29.07.2019 and allegation was that accused person committed rape on her and also beaten. Incident was witnesses by Prem Pal, Subhash, Sunil and Santosh. Prem Pal is examined as PW-8 who has not uttered single words in respect of commission of rape by the accused and turned hostile. Another witness Subhash-PW-11 who has been shown as an eye witness in the first information report uttered in his examination-in-chief that the time of alleged incident, he himself did not go to the field and he had not seen the occurrence. He also turned hostile. Another witness of fact Sunil, PW-10 has stated that he has not seen the occurrence of the rape. Names of remaining witnesses of the fact are Atendra PW-9, Subhash PW-11, Mordhwaj, PW-12, who has not been mentioned in the first information report, but they were examined who has given the only statement to the effect that they have seen the accused Ajeet when he was running away from the field. Learned trial Court further found that there is a evidence of a star witnesses i.e. victim PW-1 and she stated that nothing was happened with her. She also stated in her cross-examination that accused Ajeet did not ravish her and she clarified that whatever she told to Investigating Officer that was on the instance of her mother. She also narrated that her mother has threatened her and her brother also beaten and asked her to make

the allegation against the accused- Ajeet. Thus, the learned trial Court found that testimony of the victim is inconsistent and that does not inspire confidence. The trial court also noticed that the victim has stated in her cross-examination that nothing wrong was committed on her. The victim was medically examined by Dr. Sandesh Aarekh,PW-6 and specifically stated that if the rape happened to occur then hymen was not found old and torn. She also stated that she has not given definite opinion about sexual assault. Under such circumstances, the Court below found that the prosecution could not prove his case beyond doubt and the accused was given benefit of doubt and judgement of acquittal was passed.

Per contra, Sri Rahul Asthana, learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that the victim was of tender age, who clearly supported the prosecution version in her statement recorded under Sections 161 and 164 Cr.P.C. Therefore, there was no reason to disbelieve the prosecution story. He further submits that it is not necessary for the prosecution to produce all the witnesses and it would not have adverse effect on the prosecution case. He further submits that the learned trial Court has given undue weightage to the minor contradiction and inconsistencies occurred in the evidence of the prosecution witnesses. He further submits that on the basis of testimony of the witnesses in totality the prosecution has proved the charge against the accused respondent but findings recorded by the learned trial Court is perverse and is not one of the possible view. Submission, therefore, is that the judgement and order of acquittal passed by the trial Court requires serious consideration and reversal and the accused respondent herein is liable to be convicted.

We have considered the rival submissions and perused the record.

Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

In the case of ***Bannareddy and others vs. State of Karnataka and others,*** (2018) 5 SCC 790, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that *"the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities"*

In **Jayamma vs. State of Karnataka**, 2021 (6) SCC 213, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a "possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that

there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

In a judgement of this Court in **Virendra Singh vs. State of UP and others,** 2022 (3) ADJ 354 DB, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. *In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-*

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).

13. In Sheo Swarup and Ors. King Emperor AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of

fact arrived at by a Judge who had the advantage of seeing the witnesses...."

14. The aforesaid principle of law has consistently been followed by this Court. (See: Tulsiram Kanu v. The State AIR 1954 SC 1; Balbir Singh v. State of Punjab AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200; Khedu Mohton & Ors. v. State of Bihar AIR 1970 SC 66; Sambasivan and Ors. State of Kerala (1998) 5 SCC 412; Bhagwan Singh and Ors. v. State of M.P. (2002) 4 SCC 85; and State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC 755).

15. In Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid

down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of Uttar Pradesh v. Banne alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in Dhanapal v. State by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

11. *Hon'ble Apex Court in the case of Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.*

12. *The aforesaid judgments were taken note of with approval by Supreme Court in the case of Anwar Ali and another vs. State of Himachal Pradesh (2020) 10 SCC 166, Nagabhushan vs. State of Karnataka (2021) 5 SCC 222, and Babu (supra) in Achhar Singh vs. State of Himachal Pradesh (2021) 5 SCC 543."*

Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another,** (2022) 3 SCC 471.

On perusal of record, we find that the first information report was lodged by the victim's mother on the basis of information given by the victim. As per first

information report, two witnesses have witnessed the alleged incident but during the course of trial they did not support the prosecution version and turned hostile. Even most noticeable point is that victim herself did not support the prosecution version and clearly stated that she was threatened by her mother and beaten by her brother to implicate the accused in this false case, therefore, she had given her statement to Investigating Officer as well as before the Magistrate on the influence and under fear of their family members. She categorically stated that nothing was happened with her and accused Ajeet did not commit any sexual assault or rape on her. Dr. Sandesh Aarekh PW-6 had stated that on the examination of internal private part of the victim, symptom of rape of sexual assault was not found. In such view of the matter, we, therefore, find that the court below has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view as per the law discussed above.

Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is **rejected**.

Re: Government Appeal

Consequently, since the Criminal Misc. Application (Leave to Appeal) has been rejected by order of date, the present government appeal is also **dismissed**.

(2025) 9 ILRA 1193
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.09.2025

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 3572 of 2025

Anuj Sirohi @ Himanshu Sirohi ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Akhilendra Singh, Jitender Singh, Prabhat Kumar Singh

Counsel for the Opposite Party:
G.A., Zainul Abdin

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to anticipatory bail involving offences under Sections 376D, 506 IPC and 67 IT Act, despite serious allegations and issuance of NBW.

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 482, - Indian Penal Code (IPC) - Sections - 376D, 506, 147, 452, 354 - Information Technology Act, 2000 - Section – 67, 67-D - Criminal Procedure Code, 1973 – Sections – 82, 83, 161, 164, 173(2), 299- Anticipatory Bail Application - filed under Section 482 B.N.S.S. by the applicant - FIR - allegations of gang rape, criminal intimidation and IT Act violations - FIR initially did not attribute rape allegations to applicant - contradictions in prosecutrix's statements under Sections 161 & 164 Cr.P.C. - Division Bench earlier stayed arrest - applicant did not misuse protection - Charge sheet filed - trial commenced - applicant claims clean antecedents - State and complainant opposed bail citing seriousness of offence and applicant's alleged abscondence - Court noted contradictions in the prosecutrix's statements, absence of direct rape allegations against the applicant, his cooperation during investigation under protection of a prior stay order, clean antecedents, and commencement of trial, and relying on precedents (*Siddharam Satlingappa Mhetre* and *Sushila Aggarwal*), granted anticipatory bail with strict conditions including furnishing bond, cooperating in trial, not leaving India without permission, and refraining from influencing witnesses, subject to cancellation if conditions are violated – application is allowed.

(Para – 16, 17, 18, 19)
Application Allowed. (E-11)

CASE LAW CITED

Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694,
Sushila Aggarwal & Ors v. State (NCT of Delhi) & Anr (2020) 5 SCC 1.

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita (BNSS) - Indian Penal Code (IPC) - Information Technology Act, 2000 - Code of Criminal Procedure.

LIST OF KEYWORDS

Anticipatory Bail - Gang Rape - Criminal Intimidation - Contradictory Statements - Division Bench Stay Order - Charge Sheet Filed - Clean Antecedents - NBW (Non-Bailable Warrant) - FSL Report Pending.

CASE ARISING FROM

Case Crime No. 0036/2023 - Police Station: Thakurdwara, District Moradabad, Uttar Pradesh.
FIR dated 21.01.2023 under Sections 147, 452, 354, 376D, 506 IPC and 67D IT Act.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Akhilendra Singh, Jitender Singh, Prabhat Kumar Singh
Counsel for Respondent(s): G.A., Shri Zainul Abdin.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. Instant Criminal Misc. Anticipatory Bail Application has been filed under section 482 BNSS on behalf of applicant Anuj Sirohi @ Himanshu Sirohi under Section 482 of B.N.S.S. seeking anticipatory bail in Case Crime No. 0036/2023 under Section 376D, 506 IPC and 67 I.T. Act, Police Station - Thakurdwara, District - Moradabad till the trial of the aforesaid case.

2. Learned counsel appearing on behalf of applicant submitted that applicant is an innocent person and has not committed any offence as alleged in the FIR and no material has been collected by the investigating agency during the investigation against the petitioner. After completion of investigation, the charge sheet has been filed on 24.6.2023 before competent court.

3. Learned counsel appearing on behalf of the applicant submitted that on plain reading of the FIR, there is no allegation against the applicant for committing rape. It is further submitted that the prosecutrix has improved her version in the statement recorded under Section 161 and 164 Cr.P.C. only for purpose to falsely implicate the applicant as he is close friend of the co-accused Vijai Sirohi. It is also submitted that there is no evidence on the record to establish that the applicant has made any videography as alleged against him.

4. The arrest of the co-accused Vijay and 2 others was stayed by the Division Bench of this Court vide order dated 3.5.2023. During the said period the police has investigated the matter and filed the charge sheet for the offence punishable under Section 376D, 506 IPC and 67 D of I.T. Act. It is submitted that the petitioner/applicant has not misused or abused the protection granted by the Division Bench. It is further submitted that the applicant is a man of clean antecedents and it is also undertaken that the applicant shall abide by all the terms and conditions as imposed by the Court while granting him anticipatory bail. There is no apprehension of the petitioner fleeing from justice. It is, therefore, stated that anticipatory bail be granted to the petitioner/applicant.

5. Per contra, Mr. S.K. Ojha, learned AGA appearing on behalf of Respondent-State vehemently opposed the instant anticipatory bail application and submitted that the applicant has been charged for

commission of heinous crime under Section 376D of IPC. The applicant is also absconder and he has never cooperated with the investigating agency during the investigation. He has referred the statements u/s 161 Cr.P.C. and 164 Cr.P.C. of the prosecutrix and submitted that after plain reading of the statements there are sufficient materials/evidence on record to establish that he has committed the offence punishable under Section 376-D, 506 IPC and 67 IT Act.

6. Learned counsel appearing on behalf of the complainant vehemently opposed the instant anticipatory bail application and reiterates the contentions of Mr. S.K. Ojha, learned AGA. The charge sheet has been filed against the petitioner for offence punishable under section 376D, 506 IPC and 67 IT Act. He further states that the petitioner/applicant is accused of very serious offence punishable under section 376D IPC, therefore, anticipatory bail should not be granted to him. It is also submitted that the applicant has made video of the prosecutrix and sent it to her husband in support of his argument, he has relied on the statement of the husband under Section 161 Cr.P.C. It is further submitted that the applicant has also threatened to viral the said video in public by way of uploading the same on social media. In view of the facts and circumstances, the applicant does not deserve to be released on anticipatory bail and, therefore, his instant bail application is liable to be rejected.

7. Heard learned counsel appearing on behalf of the applicant, learned counsel appearing on behalf of the State and learned counsel appearing on behalf of the complainant and perused the material on record.

8. As per FIR version, there are no allegation of committing rape against the petitioner. Thereafter in statement recorded under Section 161 Cr.P.C., the prosecutrix has made the following statements:-

"बयान किया कि मेरा नाम दीपमाला उर्फ पूजा पुत्र देवेन्द्र सिंह R/O सैदपुर थाना बीबी नगर बु०शहर है। मेरी शादी दिनांक 11.05.2014 को प्रशान्त कुमार पुत्र महाराज सिंह ने साथ ग्रा० दुल्हापुर पट्टी जाट में हुयी थी। में मार्केटिंग तक काम करती है। मार्केटिंग के काम में प्लान देना होता है मेरे गांव में रहने वो विजय सिरोही पुत्र ज्ञानी सिंह निवासी ग्राम सैदपुर जिला बुलन्दशहर ने प्लान के लिए बुलाया जहाँ उसने मेरे फोटो खीचे लिए और जब में वापस अपने ससुराल आयी तो विजय सिंह ने मेरे फोटो मेरे पति को भेजने की धमकी देकर मुझे बुलाया दिनांक 15.08.22 को मैं उसकी धमकी से डरकर उसके पास चली गयी वहाँ नितिन मुझे कार में बैठाकर OYO होटल ले गया जहाँ उस होटल में विजय, मनीष, अनुज पहले से ही मौजूद थे वहाँ नितिन मुझे एक कमरे में ले गया वहाँ नितिन ने रेप किया और नितिन ने विडियो बनाई मनीष और विजय सिरोही भी वही मौजूद थे। उसके बाद में अपनी ससुराल आयी तो ये लोग मुझे वीडियो भेजकर ब्लैक मेल करने लगने मैने डर की वजह से किसी को कुछ नहीं बताया था अब कुछ दिन पहले सागर नाम के लड़के ने मुझे फोटो भेजकर ब्लैक मेल किया और मिलने के लिए बुलाया और धमकी दी की यदि तू

नहीं आयी तो वो विडियो और फोटो मेरे पति को भेज देगे। बहुत हिम्मत करके ये बात मैने अपने पति को बतायी। यही मेरा बयान है।"

9. After reading of the aforesaid statement of the prosecutrix, the allegation of rape was made only against co-accused Vijay Sirohi. The role of the present applicant/petitioner is only that he was present at the site.

10. The statement recorded under Section 164 Cr.P.C. of the prosecutrix is also quoted below:-

"अवलोकन वादिनी/पीडिता अन्तर्गत धारा 164 सीआरपीसी पीड़िता ने सशपथ बयान दिया कि, मेरा नाम दीपमाला उर्फ पूजा D/O देवेन्द्र सिंह उम्र 26 वर्ष R/O दुल्हापुर पट्टी ठाकुरद्वारा मुरादाबाद है। मैं मार्केटिंग का काम करती हूं। यह काम मैं सन् 2012 से करती हूं। इसी काम के दौरान मेरी मुलाकात विजय सिरोही से हुई, विजय सिरोही को मैं अपनी शादी से पहले से जानती हूं। वो मेरा शादी से पहले वायफ्रेन्ड था। मैं अपनी शादी के बाद भी उससे काम को लेकर मिलती रही हूँ। उसके पास हमारे शादी से पहले के फोटो है। वो फोटो इसने सन् 2019 में वायरल कर दिये मैनें इससे कहा कि अब मुझे तुझसे कोई बात नहीं करने वाली चो इसने कहा अगर तू मुझसे बात नहीं करेगी तो तेरे पति को फोटो दिखा दूंगा। मार्च 2019 में में उससे गिलने मेरठ गई हम CCS UNIVERSITY में मिले थे। मैं अपने भाई से बताकर विजय के साथ आ रही थी। मैं अपने वेटें को भाई के पास छोड़कर विजय के साथ उसकी गाड़ी में आयी थी। मुझे उसपर पूरा भरोसा था मैं उसकी गाड़ी से होटल में गई वह मुझे खाना खिलाने के वहाने लेकर गया वहां उसकी पहले से सैटिंग थी। उसने वहा पर मेरे साथ जबरन बलात्कार किया मनीष ने हमारी विडियो वनाई फिर में अपने घर आ गई उसके बाद मुझे विजय ने विडियो वायरल करने की धमकी दी मैने अपने घर पर किसी को नहीं बताया में अगस्त 2022 में उससे फिर मिलने गई 15.08.2022 को में मिलने गई थी। नितिन नाम का लड़का मुझे एक OYO होटल में लेकर गया वहां पर अनुज, मनीष और विजय पहले से मौजूद थे। वहीं पर अनुज और नितिन ने मेरा रेप किया और विडियो भी बनाई। जब इन्होने मुझे धमकी देनी बन्द नहीं की तो मैने अपने पति को सारी बात बताई जिसके बाद हमने थाने में अपनी रिपोर्ट लिखवाई है। मुझे इन्साफ चाहिए बस यही मेरा बयान है। सुनकर तस्दीक किया पीडिता बोले जाने पर मेरे द्वारा शब्द व शब्द बयान अंकित किया गया। हस्ताक्षर अंग्रेजी अपठित दिनांक 23.01.2023 हस्ताक्षार दीपमाला हिन्दी पठित पीडिता मैने बयान पढ़ा बयान ठीक है। दीपमाला बयान पीडिता को पढकर सुनाया स्वतंत्र सहमति दर्ज करा बयान स्वीकार

किया। हस्ताक्षर अग्रेजी अपठित दिनांक 23.01.2023 | CJ.JD.N NC CR NO.03"

11. After perusal of the aforesaid statements of the prosecutrix indicates several material contradiction in the statements.

12. On query, learned counsel for the State submitted that video and photographs which have been procured from the mobile phone of the accused persons has already been sent for FSL but the FSL report has not been received yet.

13. The applicant has filed Criminal Misc. Writ Petition No. 6923 of 2023 for quashing the FIR dated 21.01.2023 giving rise to Case Crime No. 0036 of 2023 under 147, 452, 354, 376-D, 506 IPC and 67 D of IT Act, After hearing the parties, the Division Bench of this Court has stayed the arrest of the petitioner till submission of police report under Section 173(2) Cr.PC. This is not a case of the State that during the said period between the date of stay order dated 3.5.2023 and till filing of the charge sheet, accused has tried to influence or temper any evidence. Cognizance has already been taken by the Court concerned and trial has also been commenced.

14. The parameters for granting anticipatory bail have been succinctly laid down in **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) I SCC 694** wherein the Supreme Court has held as under:-

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail.

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only

the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available."

(emphasis supplied).

15. The said principle has been affirmed by the constitution Bench of the Supreme Court in **Sushila Aggarwal and Ors v. State (NCT of Delhi) and Anr (2020) 5 SCC 1.**

16. No doubt, the petitioner is accused of a very serious offence punishable under Section 376 D IPC. But other aspects can not be ignored while adjudicating the instant case i.e. firstly, there are material contradiction in the statement of the prosecutrix, secondly, the Division Bench of this Court has already granted stay on arrest of the accused till the filing of the charge sheet. Thirdly, he has never misused the arrest stay order and cooperated with the investigation and now investigation has been completed and charge sheet has been filed. Fourthly, the cognizance has been taken by the court and trial has already been commenced. Fifthly, he is man of clean antecedents and undertaken to cooperate in trial.There is no apprehension of the applicant/petitioner fleeing from justice.

17. The State and complainant has taken serious objection that since NBW has been issued against the petitioner/applicant, he is not entitled for any leniency by way of granting anticipatory bail. Taking into consideration of the said objection, I am of the view that the Supreme Court and other High Courts have held that where the proceedings under Section 82/83 and 299 of Cr.P.C. (84/85 and 335 of the BNSS) have been initiated against the accused and/or he has been declared proclaimed offender, the application for anticipatory bail would be maintainable. However, Such consideration and grant of anticipatory bail to the accused would depend upon the gravity and seriousness of the offence involved therein.

18. Taking into consideration of the discussion, legal propositions in foregoing

paragraphs, I am inclined to allow the instant anticipatory bail application. Accordingly, it is allowed. In the event of arrest, the applicant **Anuj Sirohi @ Himanshu Sirohi** be released on anticipatory bail in the aforesaid case crime till the conclusion of the trial on furnishing a personal bond of Rs.1,00,000/- (Rs. One Lakh) with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall make himself available for trial before the Court concerned as and when date fixed.

(ii) The applicant shall provide his mobile number and it is directed to always keep open his mobile phone 24 hours and cooperate in the trial and if Court concerned requires some document, the applicant will provide the same to the IO/Court concerned.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any police officer;

(iv). The applicant shall not leave India without previous permission of the Court and if he has pass port, the same shall be deposited by him before the court concerned.

19. In default of any of the conditions by the applicant, the I.O. and learned AGA are at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

20. In view of the aforesaid observations/direction, the instant application is disposed off.

21. It is made clear that observations made in the instant order is only for the adjudication of the present application.

(2025) 9 ILRA 1199
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.09.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Criminal Misc. Bail Application No. 8184 of 2025

Randhir ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Amber Khanna, Raj Kumar Khanna, Ram Kripal, Sandal Khanna

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether the applicant, against whom proceedings under Section 82 Cr.P.C. have been initiated and who is alleged to be absconding, is entitled to anticipatory bail?

HEADNOTES

Criminal Law – Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8/20, 37, 50, 36A(4) - Code of Criminal Procedure, 1973 – Sections 167(2), 173(2), 173(8), 293 - Second Bail Application – first Bail was rejected – FIR – alleged that, when police intercepted the vehicle, 151.600 kgs of Ganja (commercial quantity) was recovered from the truck, applicant was in, and both driver and cleaner confessed to transporting it - applicant pleaded that, he had no connection with the contraband, has no criminal history, and claims procedural lapses under Section 50 NDPS Act – Court found that, a commercial quantity of Ganja was recovered from the applicant and co-accused, attracting the stringent bail restrictions under Section 37 of the NDPS Act - Relying on precedents such as *Dharampal Singh*, *Mohan Lal*, and *Rattan Mallik*, the Court emphasized that "possession" includes conscious and

constructive possession, and Section 50 applies only to personal search, not vehicle searches - Since the applicant was apprehended on the spot, the contraband was confirmed by FSL report, and compliance with Section 50 was established, the Court held that no reasonable ground existed to grant bail under Section 37 and accordingly Bail Application rejected. (Para – 14, 19, 20, 21)

Application Rejected. (E-11)

CASE LAW CITED

Simarnjit Singh v. State of Punjab (2023 SC 658) - Mangilal v. State of Madhya Pradesh (2023 SC 703) - Union of India v. Mohanlal & Another (2016 SC 82) – Union of India Vs. Ram Samujh and Anotehr (1999 vol. SCC 429) – Union of India Vs. Shiv Shanker Kesari (2007 vol. 7 SCC 798) -Union of India Vs. Prateek Shukla (AIR 2021 SC 1509) – State of Keral Etc. Vs. Rajesh Etc. (AIR 2020 SC 721) – State (NCT fo Delhi) Narcotics Control Bureau Vs. Lokesh Chadha (2021 vol. 5 SCC 724) – Union of India through Narcotics Control Bueau, Lucknow Vs. Mohd. Nawaz Khan (2021 vol. 10 SCC 100) – Dehal Singh Vs. State of Himachal Pradesh (2011 vol. 72 ACC 661) - Dharampal Singh v. State of Punjab (2010) 9 SCC 608 - Mohan Lal v. State of Rajasthan (2015) 6 SCC 222 - Union of India v. Rattan Mallik (2009) 2 SCC 624 - Megh Singh v. State of Punjab, 2003 Cri LJ 4329 - Dehal Singh v. State of Himachal Pradesh, 2011 (72) ACC 661 - K. Veeraswami v. Union of India (1991) 3 SCC 655 - Central Bureau of Investigation vs. R.S. Pai & Another, 2002 SCC (5) 82 - Divyas Bardeva vs. Narcotics Control Bureau, Special Leave to Appeal (Crl) Nos. 11628/2022 - Mohd. Arbaz, etc vs. State of NCT of Delhi, S.L.P. (Crl.) Nos. 8164-8166/20212002 SCC(5) 82 - Pankaj Gupta vs. Narcotics Control Bureau, S.L.P. (Crl.) No. 12200/2023 - Bablu Singh vs. State of M.P., S.L.P.(Crl) No. 631 of 2024; Babu Singh & Others vs. State of U.P., 1978 Cr.L.J. 651 - Aleksander Kurganov vs. State & Another, 2021 Supreme (Bomb) 658 - Tajuddin @ Rotash vs. State of Haryana, 2021 Supreme (P & H) 1626 (online) / 2022 Cr.L.J., Page 1135 - Vinay Kumar @ Vicky vs. State of Haryana, 2021 Cri CC 200 - Gurjant Singh vs. State of Haryana, CRR 1868-2022(O&M) - Faiyaz Miyan vs. State of Bihar, Criminal Misc. No. 16906 of 2025, decided on 02.07.2025 - Aman Dixit Vs. State of U.P., Criminal Misc. Bail Application No. 11247 of 2021, decided on 12.11.2021 - Narcotics Control Bureau vs. Kashif in Criminal Appeal No.5544 of 2024 arising out of Special Leave Petition (Crl.) No.12120 of 2024 - Pooran Mal vs. Director of Inspection (Investigation) New Delhi and others, (1974) 1 SCC 345 - State of Punjab vs. Baldev Singh (1999) 6 SCC 172 - State of H.P. vs. Pirthi Chand and Another (1996) 2 SCC 37 - State of Punjab vs. Makhan Chand (2004) 3 SCC 453 - K. Veeraswami vs. Union of India and Others : (1991) 3 SCC 655 - Yusuf @ Asif vs. State 2023 SCC Online SC 1328 and Mohammed Khalid and Another vs. State of Telangana (2024) 5 SCC 393 - CBI vs. Kapil Wadhawan: 2024 SCC OnLine SC 66.

LIST OF ACTS

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) – Code of Criminal Procedure, 1973 (Cr.P.C.).

LIST OF KEYWORDS

Bail application - NDPS Act - Conscious possession - Commercial quantity - FSL report - Charge-sheet - Daily wager cleaner - Ganja recovery.

CASE ARISING FROM

Case Crime No. 660 of 2023 (S.T. No. 33 of 2024) - Police Station: Robertsganj, District Sonbhadra, Uttar Pradesh - Offence: Recovery of 151.600 kgs of ganja from DCM Truck No. HR45 B3831.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amber Khanna, Raj Kumar Khanna, Ram Kripal, Sandal Khanna.

Counsel for Respondent(s): G.A.

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

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. This is a second bail application. By means of this application, applicant-Randhir, who is involved in Case Crime No. 660 of 2023(S.T. No. 33 of 2024), under Section 8/20 of N.D.P.S. Act, Police

Station - Robertsganj, District - Sonbhadra, seeks enlargement on bail during the pendency of trial.

3. The first bail application of the applicant being Criminal Misc. Bail Application No. 3333 of 2024 was rejected on 12.08.2024 and following order was passed:-

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. By means of the present bail application, the applicant seeks bail in Case Crime No. 660 of 2023, under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"), Police Station- Robertsganj, District- Sonbhadra, during the pendency of trial.

3. The prosecution story as unfolded from the First Information Report (FIR) is that Contraband (Ganja) has been recovered from DCM Truck No.HR45 B3831 in eight packets, total weight 151.600 kgs. When the police had intercepted the vehicle at Robertsganj, Sonbhadra, the driver and the cleaner were apprehended on spot who confessed that they were brining the aforesaid contraband from Orrisa and were going to Haryana.

4. Learned counsel for the applicant submitted that the applicant is Cleaner of the said truck and has no concerned with the aforesaid Contraband, which is alleged to have been recovered from the truck. It is further contended that the applicant does not have any criminal history. It is next contended that necessary compliance under Section 50 of the Act was not done and the sample were not prepared and sent for chemical examination. It was lastly contended that the applicant is languishing in jail since 12.11.2023. Reliance has been placed upon decision of Apex Court rendered in ***Simarnjit Singh vs. State of Punjab 2023 Supreme (SC) 658; Mangilal vs. State of Madhya Pradesh 2023 Supreme (SC) 703;*** and**,** ***Union of India vs. Mohanlal & Anr. 2016 Supreme (SC) 82.***

5. Learned A.G.A. has opposed the bail application and submitted that the applicant was apprehended on spot along with driver of the truck and were transporting Contraband (Ganja). The recovered quantity is huge to the tune of 151.600 kgs., which is well above the commercial quantity. It is further submitted that the recovery was made from the truck and it amounts to conscious possession and the necessary compliance was done. He further submitted that the sample of the recovered contraband was sent of chemical analysis and the report of FSL had come wherein the recovered material was found to be Contraband (ganja), copy of which has been appended as Annexure -1 to the counter affidavit. It is further submitted that after investigation was concluded on 31.12.2023, charge sheet has also been filed in the matter.

6. I have heard learned counsel for the parties and perused the material on record.

7. This is a case where contraband (Ganja) amounting to 151.600 kgs. has been recovered from the possession of the applicant and other co-accused.

8. Section 37 of the NDPS Act governs the field for grant of bail in offences which are cognizable and non-bailable. Section 37 is extracted here as under;

"37. ***Offences to be cognizable and non-bailable****.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

9. According to the aforesaid provisions, the Court, before granting bail, has to record reason that there are reasonable ground that the applicant is not guilty of such offence and furthermore that he is not likely to commit any offence while on bail.

10. Apex Court, while dealing with aforesaid provision in case of ***Union of India Vs. Ram Samujh and Another, (1999) 9 SCC 429****, held as under;*

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary, Union Territory of Goa. (1990) 1 SCC 95 as under:

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine,"

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on bail."

*11. In **Union of India Vs. Shiv Shanker Kesari, (2007) 7 SCC 798**, Apex Court elaborated and explained the conditions for granting of bail as provided under Section 37 of the NDPS Act. Relevant paragraph Nos. 6 and 7 are extracted here as under;*

"6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged."

*12. In Union of **India Vs. Rattan Mallik @ Habul, (2009) 1 SCC (Cri) 831**, Apex Court observed as under;*

"14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of `not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

*13. In **State of Kerala Etc. Vs. Rajesh Etc. AIR 2020 SC 721**, Apex Court considered the scope of Section 37 and relying upon earlier decision in **Ram Samujh (supra)** held as under;*

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section

37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

14. The Apex Court in ***Union of India vs. Prateek Shukla AIR 2021 SC 1509*** *held that merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind. The provision of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail is made out.*

15. In ***State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha (2021) 5 SCC 724*** *the Court held as under :*

".....Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for the offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail, where the Public Prosecutor oppose the application, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

16. In a recent judgment of ***Union of India through Narcotics Control Bureau, Lucknow vs. Mohd. Nawaz Khan (2021) 10 SCC 100****, Hon'ble Apex Court while cancelling the bail of accused held that the High Court should consider that in case the accused is enlarged on bail, there should be reasonable ground to believe that he will not commit an offence in future. Relevant paras of the judgment reads hereas under :*

"23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

.....

25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal v. State of H.P. [Madan Lal v. State of H.P., (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

***

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

26. What amounts to "conscious possession" was also considered in Dharampal Singh v. State of Punjab [Dharampal Singh v. State of Punjab, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal v. State of Rajasthan [Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881], this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

....

28. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in Union of India v. Rattan Mallik [Union of India v. Rattan Mallik, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831] , a two-Judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the "possession" of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29. In line with the decision of this Court in Rattan Mallik [Union of India v. Rattan Mallik, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831], we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the

level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

17. Supreme Court while dealing with the question of possession and application of Section 50 in case of ***Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329****, held that word "possession' includes conscious possession. Further Section 50 applies in case of personal search of a person and it does not extend to search of a vehicle or container or a bag or premises. Relevant paragraph nos. 9 to 13 and 16 are extracted here as under;*

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the context of all statutes.

10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD).

13. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483).

16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See Kalema Tumba v. State of Maharashtra and Anr. (JT1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT1999 (4) SC 595), Gurbax Singh v. State of Haryana(2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance."

18. While dealing with the provision of Section 50 of the Act, Apex Court in case of ***Dehal Singh Vs. State of Himachal Pradesh, 2011 (72) ACC 661****, held that Section 50 relates to the search of a person and not of the vehicle and thus there was no requirement for informing the applicant of the right to be searched in presence of a gazetted officer of Magistrate.*

19. Reliance placed by applicant's counsel on the judgments of Apex Court is of no help as the State has come with the case that necessary compliance of Section 50 of the Act has been done and report of FSL has already been filed on 02.12.2023 wherein sample recovered was found to be Contraband (Ganja).

20. In the light of the analysis of the case, as mentioned above, and considering that recovery of huge quantity of contraband (Ganja) is 151.600 kgs. and applicant was apprehended on the spot and was having a conscious and constructive possession over the recovered contraband (Ganja), I do not find any reasonable ground in terms of Section 37 of the NDPS Act to release the applicant on bail.

21. Thus, taking into account the submission made by learned counsel for the parties and the evidence on record and the complicity of the applicant in offence in question, this Court do not find any ground to release the applicant on bail.

22. In the result, the bail application stands rejected."

4. Counsel for the applicant submitted that the applicant is in jail since 12.11.2023. He further submitted that the mandatory provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "NDPS Act") were not complied with and the ground of arrest at the time of arrest was not disclosed to the applicant. According to him, applicant is cleaner of DCM truck from which the contraband is alleged to have been recovered. He was working as a daily wager by the owner/driver of the vehicle. It is also contended that he is working on a daily wage of Rs.500/- per day and has a wife, three daughters and one son and there is no one to look after the children. It is also contended that charge-sheet has been submitted and trial court had took cognizance in the matter and charges were framed on 12.01.2024. As PW-1 has not appeared, Non Bailable Warrants have been issued against him. It is also stated that the alleged contraband does not belong to the applicant and he was not in conscious possession of the same.

5. Learned counsel has also submitted that police had not prepared the representative sample of each bag recovered from DCM truck. The Investigating Officer had submitted the charge-sheet on 31.12.2023 without filing FSL report along with said charge-sheet. He also invited the attention of the Court to the question and answer issued by trial court for demonstrating the fact that FSL report is not part of the charge-sheet. Reliance has been placed upon the decision of Apex Court rendered in case of **Central Bureau of Investigation vs. R.S. Pai & Another, 2002 SCC (5) 82; Divyas Bardeva vs. Narcotics Control Bureau, Special Leave to Appeal (Crl) Nos. 11628/2022; Mohd. Arbaz, etc vs. State of NCT of Delhi, S.L.P. (Crl.) Nos. 8164-8166/20212002 SCC(5) 82; Pankaj Gupta vs. Narcotics Control Bureau, S.L.P. (Crl.) No. 12200/2023; Bablu Singh vs. State of M.P., S.L.P.(Crl) No. 631 of 2024; Babu Singh & Others vs. State of U.P., 1978 Cr.L.J. 651,** judgment of Bombay High Court rendered in case of **Aleksander Kurganov vs. State & Another, 2021 Supreme (Bomb) 658;** judgment of Punjab and Haryana High Court rendered in case of **Tajuddin @ Rotash vs. State of Haryana, 2021 Supreme (P & H)1626 (online)/ 2022 Cr.L.J., Page 1135; Vinay Kumar @ Vicky vs. State of Haryana, 2021 CriCC**

200; Gurjant Singh vs. State of Haryana, CRR 1868-2022(O&M); judgment of Patna High Court rendered in case of **Faiyaz Miyan vs. State of Bihar, Criminal Misc. No. 16906 of 2025, decided on 02.07.2025 and judgment of this Court rendered in case of Aman Dixit Vs. State of U.P., Criminal Misc. Bail Application No. 11247 of 2021**, decided on 12.11.2021.

6. Learned A.G.A. has opposed the bail application and submitted that huge quantity of contraband (ganja) has been recovered and the applicant was sitting in the DCM truck when the alleged recovery was made. He further submitted that sample from each eight bags of ganja recovered was sent for chemical analysis which amounted to 80 grams on 18.11.2023. The report of FSL was submitted on 02.12.2023 which has been annexed as annexure-1 to counter affidavit. According to him, charge-sheet was submitted on 31.12.2023 and cognizance order was passed on 12.01.2024. According to him, FSL report is part of the case diary dated 19.06.2024 as the investigation is still going on in respect of the owner of the vehicle which is evident from CD-8 prepared on 31.12.2023. He then contended that FSL report is only a corroborative evidence which shall be considered at the time of trial. The argument raised from the applicant side that it is not part of case diary is not acceptable. He further contended that Section 293 of Code of Criminal Procedure, 1973 provides for report of certain government scientific expert, which includes examination or analysis and report in course of any proceeding under the Code, and may be used as evidence in any inquiry, trial or other proceedings under the Code. He also contended that provisions of Section 167(2) Cr.P.C. in case of commercial quantity having been recovered of any contraband would be read as 180 days and not as 90 days. This has been provided in Section 36A(4) of the NDPS Act, 1985.

7. I have heard respective counsel for the parties and perused the material on record.

8. Before adverting to decide the second bail application, a cursory glance of recent judgment rendered by Hon'ble Apex Court in case of **Narcotics Control Bureau vs. Kashif in Criminal Appeal No.5544 of 2024 arising out of Special Leave Petition (Crl.) No.12120 of 2024**, decided on 20.12.2024, is necessary for better understanding of the case.

9. Hon'ble Supreme Court considering the legislative intent and the history of the NDPS Act and insertion of Section 52A held that the heading of Section 52A itself leave no room of doubt that the provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. Relevant paras 20, 21, 23 and 24 of the judgment are extracted here as under :-

"20. Now, so far as Section 52A is concerned, the language employed therein itself is very clear that the said provision was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and other relevant considerations. Apart from the plain language used in the said section, its Heading also makes it

clear that the said provision was inserted for the Disposal of the seized narcotic drugs and psychotropic substances. As per the well settled rule of interpretation, the Section Heading or Marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The Section Heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble. (Eastern Coalfields Limited vs. Sanjay Transport Agency and Another, (2009) 7 SCC 345)

21. The insertion of Section 52A with the Heading "Disposal of seized narcotic drugs and psychotropic substances" along with the insertion of the words "to provide for the forfeiture of property derived from or used in, illicit traffic in narcotics drugs and psychotropic substances, to implement the provisions of International Conventions on Narcotics Drugs and Psychotropic Substances", in the long title of the NDPS Act, by Act 2 of 1989 w.e.f. 29.05.1989, leaves no room of doubt that the said provision of Section 52A was inserted for an early disposal of the seized narcotic drugs and psychotropic substances, as one of the measures required to be taken to implement the provisions of the International Conventions on Narcotics Drugs and Psychotropic Substances. The Heading of Section 52A i.e. Disposal of seized narcotic drugs and psychotropic substances delineates the object and reason of the insertion of said provision and such Heading cannot be underscored. From the bare reading of Section 52A also it is very much discernable that sub-section (1) thereof empowers the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, to specify narcotic drugs, psychotropic substances for the purpose of their disposal as soon as may be after their seizure, by such officer and in such manner as the Central Government may determine after following the procedure specified in sub-section (2).

....

23. As demonstrated above, sub-section (2) of Section 52A specifies the procedure as contemplated in sub-section (1) thereof, for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. Any deviation or delay in making the application under subsection (2) by the concerned officer to the Magistrate or the delay on the part of the Magistrate in deciding such application could at the most be termed as an irregularity and not an illegality which would nullify or vitiate the entire case of the prosecution. The jurisprudence as developed by the courts so far, makes clear distinction between an "irregular proceeding" and an "illegal proceeding." While an irregularity can be remedied, an illegality cannot be. An irregularity may be overlooked or corrected without affecting the outcome, whereas an illegality may lead to nullification of the proceedings. Any breach of procedure of rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it can not be termed as an illegality leading to the nullification of the proceedings. 24.Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two

opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned 23 officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act."

10. The Apex Court further considered the scope of Section 52A in light of the decision of Constitution Bench in case of **Pooran Mal vs. Director of Inspection (Investigation) New Delhi and others, (1974) 1 SCC 345** and Constitution Bench decision in case of **State of Punjab vs. Baldev Singh (1999) 6 SCC 172** as well as decision in case of **State of H.P. vs. Pirthi Chand and Another (1996) 2 SCC 37** and **State of Punjab vs. Makhan Chand (2004) 3 SCC 453** and held that evidence collected during course of investigation in legal and proper manner and sought to be used in course of trial with regard to the seized contraband substances could not be simply brushed aside on the ground of procedural irregularity if any, committed by the concerned officer authorized in making application to the Magistrate as contemplated under Section 52A of the Act. Relevant paras 31, 32 and 33 of the judgment in case of **Kashif (supra)** are extracted here as under :-

"31. From the above decisions, the position that emerges is that this Court in catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the Notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of F.S.L. reports etc. Even otherwise, in 28 view of the law laid down by the Constitution Benches in case of Pooran Mal and in case of Baldev Singh, any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The Court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the concerned officer authorised in making application to the Magistrate as contemplated under Section 52A of the Act.

32. Significantly, the Authorised Officer can make the application under subsection (2) of Section 52A for three purposes - (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction "OR" made in

between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision muchless its non-compliance fatal to the case of prosecution.

33. Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the Court as primary evidence in view of sub-section (3), nonetheless the documents like Panchnama, seizure memo, arrest memo etc. prepared by the Investigating Officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to Search and Seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52A of the Act."

11. The Apex Court further went on to hold that in the decision rendered in case of **Union of India vs. Mohanlal and Another (2016) 3 SCC 379**, the issue of pilferage of contraband was the main issue. The prime focal in case of **Mohanlal (supra)** was disposal of seized contraband goods as contemplated in Section 52A. Relevant paras 34 and 35 of the judgment in Kashif (supra) are extracted here as under :-

*"34. In our opinion reliance placed by the High Court on the decision of this Court in **Union of India Vs. Mohanlal and Another (2016) 3 SCC 379**, is thoroughly misplaced. In the said case, the issue of pilferage of contraband was the main issue. The Court after noticing the non-compliance of the procedure laid down in the Standing Order No. 1 of 89 dated 13.06.1989, and the possibility of the pilferage of contraband goods and their return to the market place for circulation, had appointed an amicus curiae for making a realistic review of the procedure for search, disposal or destruction of the narcotics and remedial steps that need to be taken to plug the loopholes, if any. The Court, thereafter, had raised the queries with regard to the seizure, storage, disposal/destruction and also with regard to the judicial supervision in respect of the seized narcotic drugs and psychotropic substances. The prime focal in case of Mohanlal was the disposal of seized contraband goods as contemplated in Section 52A. Though it held that the process of drawing samples has to be done in presence of and under the supervision of the Magistrate, it nowhere held that non-compliance or delayed compliance of the procedure prescribed under Section 52A (2) would vitiate the trial or would entitle the accused to be released on bail.*

35. None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and Notifications issued by the NCB and the Central Government before and after the insertion of Section 52A till the Rules of 2022 were framed, the concerned officer was required to take samples of the seized contraband substances on the spot of recovery in duplicate in presence of the Panch witnesses and the person in whose possession the drug or substance recovered, by drawing a Panchnama. It

was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52A.″

12. While considering the recent judgment of Apex Court rendered in case of **Simarnjit vs. State of Punjab (Criminal Appeal No.1443/2023); Yusuf @ Asif vs. State 2023 SCC Online SC 1328** and **Mohammed Khalid and Another vs. State of Telangana (2024) 5 SCC 393**; the Apex Court in **Kashif (supra)** in paras 36, 37 and 38 held as under :-

*"36. At this stage, we must deal with the recent judgments in case of **Simarnjit vs. State of Punjab, (Criminal Appeal No.1443/2023),** in case of **Yusuf @ Asif vs. State (2023 SCC Online SC 1328),** and in case of **Mohammed Khalid and Another vs. State of Telangana ((2024) 5 SCC 393)** in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or noncompliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of Pooran Mal and Baldev Singh must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.*

37. It hardly needs to be reiterated that every law is designed to further ends of justice and not to frustrate it on mere technicalities. If the language of a Statute in its ordinary meaning and grammatical construction leads a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence. It is equally settled legal position that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law. In Maxwell on Interpretation of Statutes, Tenth Edition at page 229, the following passage is found: -

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

*38. As observed by this Court in **K.P. Varghese vs. Income Tax Officer, Ernakulam and Another (1981) 4 SCC 173**, a statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the*

plain and literal interpretation of statutory provision produces a manifestly absurd and unjust result, the Court may modify the language used by the Legislature or even do some violence to it, so as to achieve the obvious intention of the Legislature and produce a rational construction and just result."

13. The Apex Court, in para 39 of the judgment, had laid down the guidelines in regard to consideration of bail application in cases under the NDPS Act and the purpose of Section 52A and disposal of seized narcotics drugs and psychotropic substances, which are extracted hereas under :-

"39. The upshot of the above discussion may be summarized as under:

(I) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

14. The contention raised for enlarging the applicant on bail in view of the fact that FSL report is not part of the charge-sheet submitted by Investigating Officer on 31.12.2023 cannot be accepted as the report of chemical analysis of the contraband was given by the laboratory on 02.12.2023 confirming the recovered substance to be contraband (ganja).

15. It is an admitted position that investigation as far as owner of the vehicle is still going on and the charge-sheet has already been submitted on 31.12.2023.

16. The Constitution Bench in **K. Veeraswami vs. Union of India and Others : (1991) 3 SCC 655** has explained the scope of Section 173(2). The relevant paragraph of the said judgment is reproduced as under:

"76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section

170. As observed by this Court in Satya Narain Musadi v. State of Bihar [(1980) 3 SCC 152, 157 : 1980 SCC (Cri) 660] that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

17. The principle of law articulated in the aforesaid judgments was reiterated elaborately by the Hon'ble Apex Court in a recent judgment of **CBI vs. Kapil Wadhawan: 2024 SCC OnLine SC 66**, wherein it was held as under:

"22. In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173 (2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175 (5). As settled in the afore-stated case, it is not necessary that all the details of the offence must be stated.

23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet

is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr. P.C."

(emphasis supplied)

18. Section 173 of the Code of Criminal Procedure reads as under : -

"173. Report of police officer on completion of investigation.--(1) Every investigation under this Chapter shall be completed without unnecessary delay.

xxxx xxxx xxxx (2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, weather with or without sureties;

(g) whether he has been forwarded in custody under section 170.

xxxx xxxx xxxx

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order-for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the

police officer shall forward to the Magistrate alongwith the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements-recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

(emphasis supplied)

19. Thus, it is clear that charge-sheet is filed by completion of an investigation. Once Investigating Officer has found sufficient evidence to prosecute an accused for offence for which First Information Report has been registered, the FSL report, therefore, would only be corroborative in nature to the material collected and filed along with charge-sheet by Investigating Officer. Hence, report of FSL further received on a subsequent stage would be covered under Section 173(8) of Cr.P.C. It is clear from the perusal of the case diary placed by learned A.G.A. that investigation as far as owner of the vehicle is concerned is still going on and the FSL report which was given by laboratory on 02.12.2023 has been made part of the case diary on 16.06.2024.

20. The argument raised that applicant is entitled for bail as FSL report is not part of case diary cannot be accepted as Section 293 of Cr.P.C. provides for filing of certain report of government scientific experts. Sub-section (4) of Section 293 provides for Government scientific experts which encompasses the report of Chemical Examiner or Assistant Chemical Examiner to Government. The report submitted by Vidhi Vigyan Prayogshala, U.P., Ramnagar, Varanasi is covered by sub-section 4(a) of Section 293. The report so submitted is only corroborative in nature to the material collected and filed along with charge-sheet by Investigating Officer. There is no denial to the fact that report has not come from FSL confirming the contraband seized as ganja.

21. Having considered the argument raised from both sides, I find that the contraband (ganja) has been seized above the commercial quantity from the vehicle in which the applicant was sitting and claims to be cleaner and was in conscious possession of the said contraband. The

reliance placed upon the various decisions are distinguishable from the facts of the present case.

22. No case for enlarging the applicant on bail is made out.

23. The bail application stands rejected.

(2025) 9 ILRA 1217
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.09.2025

BEFORE

THE HON'BLE DR.GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Application No. 8196 of 2024

Kuldeep ...Applicant
Versus
State of U.P. ...Respondent

Counsel for the Applicant:
A.C. Srivastava, Shubham Singh

Counsel for the Opposite Party:
Manoj Kumar Gupta, G.A., Gorakh Yadav, Jitendra Kumar

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to bail in the second bail application solely on the ground of prolonged incarceration, without presenting any new or relevant facts.

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC), 1973 - Section 436A - Indian Penal Code (IPC), 1860 - Sections 498-A, 323, 325, 307, 354, 376, 504, 511 - Dowry Prohibition Act, 1961 - Sections 3, 4 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 479- Second Bail Application - filed after first rejected - FIR registered under Sections 498-A, 323, 325, 307, 354, 376, 504, 511 IPC and Sections 3/4 of the Dowry Prohibition Act - Allegations of harassment for dowry, demand of dowry, attempted sexual assault, physical assault resulting in spinal injuries and paralysis of both legs - Applicant's plea that in custody for over one year and eleven months however, trial progress slow with only one prosecution witness examined - Legal reliance: Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023 – first-time offender who has spent one-third of maximum prescribed imprisonment in custody should be released on bail – Court finds that, Section 479 BNSS more beneficial than Section 436A CrPC, but defense counsel unable to provide clear details regarding victim's statement under Section 164 CrPC; admitted attempts to record statement failed despite charge sheet filed – while considering the Supreme Court and High Court rulings in which law settled that bail cannot be granted merely on ground of delay in trial and successive bail applications permissible only with significant change in circumstances or law – held, accused failed to present fresh grounds beyond custody duration and granting bail would hinder trial progress – hence, considering the seriousness of allegations, applicant's role, and prima facie case established by prosecution, the second bail application is not maintainable – thus, bail application stands rejected. (Para – 13, 14, 15)

Application Rejected. (E-11)

CASE LAW CITED

Nadeem Ahmad v. State of West Bengal, 2005 SCC OnLine SC 117 – State of Maharashtra v. Budhikota Subbarao, 1989 Supp (2) SCC 605 – Satyapal v. State of U.P., 1998 SCC OnLine All 1224 – State of M.P. v. Kajad, (2001) 7 SCC 673 – Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42.

LIST OF ACTS

Code of Criminal Procedure (CrPC), 1973 - Indian Penal Code (IPC), 1860 - Dowry Prohibition Act, 1961 - Bharatiya Nagarik Suraksha Sanhita, 2023.

LIST OF KEYWORDS

Second Bail Application - Dowry Harassment - Attempted Sexual Assault - Delay in Trial -

Successive Bail - Custody Duration - Prima Facie Case - Rejection of Bail.

CASE ARISING FROM

Case No. 954/2023, Police Station Kavinagar, District Ghaziabad, Uttar Pradesh - Allegations of dowry harassment, sexual assault attempt, and grievous injury to victim.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri A C Srivastava and Senior Advocate V P Srivastava.

Counsel for Respondent(s): Shri Chandan Singh, GA.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक की ओर से मु०अ०सं० 954/2023, अन्तर्गत धारा 498-A, 323, 325, 307, 354, 376, 504, 511 भा०दं०वि० एवं धारा 3/4 दहेज प्रतिषेध अधिनियम, थाना कविनगर, जिला गाजियाबाद में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2. आवेदक की ओर से उपस्थित विद्वान अधिवक्ता श्री ए०सी० श्रीवास्तव, वरिष्ठ विद्वान अधिवक्ता श्री वी०पी० श्रीवास्तव एवं राज्य की ओर से उपस्थित विद्वान अधिवक्ता श्री चन्दन सिंह को सुना तथा पत्रावली का परिशीलन किया।

3. आवेदक का यह द्वितीय जमानत आवेदन पत्र है। आवेदक का प्रथम जमानत, जमानत आवेदन पत्र सं० 53606/2023 में इस न्यायालय के आदेश दिनांक 14.12.2023 के द्वारा निरस्त किया गया है।

4. संक्षेप में अभियोजन कथानक यह है कि वादी द्वारा दिनांक 21.10.2023 को समय 13.40 बजे थाना कविनगर पर इस आशय की रिपोर्ट दर्ज करायी गयी कि उसकी बहन नीतू सिंह का विवाह दिनांक 05.02.2021 को प्रशान्त कुमार के साथ हिन्दू रिति-रिवाज के अनुसार संपन्न हुआ। शादी में लगभग 16 लाख रूपये खर्च किया। वादी की बहन को उसके ससुराल वाले शादी के दिन से कम दहेज लाने का ताना देने लगे। सास सविता, ससुर शिवनाथ, जेठ कुलदीप, जेठानी प्रीति तथा पति प्रशान्त आये दिन दहेज में 10 लाख रूपये नकद लाने की मांग करते थे। दिनांक 3 अगस्त 2023 को वादी की बहन ने फोन पर बताया कि जेठ ने उसके साथ अश्लील हरकत और जबरदस्ती बलात्कार करने का प्रयास किया। दिनांक 20.10.23 को प्रशान्त का फोन आया कि अपनी बहन को ले जाओं, इस वह अपने घर में नहीं रखना। वादी सुबह तीन बजे प्रशान्त का फोन आया और कहा कि आपकी बहन सर्वोदया अस्पताल में भर्ती है। वादी व उसके परिवार वाले जब अस्पताल पहुंचे तो वहां पर वादी की बहन ने बताया कि कल रात करीब 10 बजे उसका जेठ उसके कमरें में आया तथा जबरदस्ती बलात्कार करने का प्रयास किया विरोध पर वादी की बहन को ही उल्टा सभी

लोगों ने मारा पीटा जान बचाने के लिए वादी की बहनभाग कर घर की छत पर पहुंची तो वहां उक्त सभी लोगों ने जान से मारने की नीयत से उसकी बहन नीतू को मकान की तीसरी मंजिल से धक्का दे दिया। जिससे वादी की बहन रीड़ की हड्डी टूट गयी दोनों पैर पैरालाइस हो गये।

5. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि इस मामलें में नवीन तथ्य यह है कि आवेदक का यह द्वितीय जमानत आवेदन पत्र है तथा आवेदक एक वर्ष, ग्यारह माह, पांच दिवस से कारागार में निरूद्ध है, किंतु इस वाद से संबंधित सत्र परीक्षण में अभी तक केवल अभियोगी/अभियोजन साक्षी सं०-1 का ही परीक्षण हो पाया है। इससे परिलक्षित हो रहा है कि इस वाद से संबंधित सत्र परीक्षण का निस्तारण निकट भविष्य में होने की संभावना नहीं है। आवेदक विचाराधीन कैदी के रूप में अधिक समय से कारागार में निरुद्ध है। उनके द्वारा अपने तर्क के समर्थन में भारतीय नागरिक सुरक्षा संहिता, 2023 में धारा 479 भारतीय नागरिक सुरक्षा संहिता के अंतर्गत 'एक विचाराधीन कैदी को हिरासत में रखने की अधिकतम अवधि' से संबंधित एक प्रावधान है, की ओर न्यायालय का ध्यान आकर्षित किया, जिसमें यह आग्रह किया गया है कि पहली बार अपराध करने वाले व्यक्ति (जिसे पहले कभी किसी अपराध के लिए दोषी नहीं ठहराया गया है) को न्यायालय द्वारा मुचलके पर रिहा किया जाना आवश्यक है, यदि वह किसी विशेष कानून के तहत ऐसे अपराध के लिए निर्दिष्ट कारावास की अधिकतम अवधि के एक-तिहाई तक की अवधि के लिए हिरासत में रह चुका है तथा इस तथ्य को ध्यान में रखते हुए कि भारतीय नागरिक सुरक्षा संहिता के तहत प्रतिस्थापित प्रावधान दंड प्रक्रिया संहिता, 1973 की धारा 436ए की तुलना में अधिक लाभकारी है, जिसमें पहली बार अपराधी द्वारा भुगती गई अवधि ऐसे अपराध के लिए निर्दिष्ट कारावास की अधिकतम अवधि के आधे तक निर्धारित की गई थी। पुनः उनका कथन है कि आवेदक की ओर से यह आश्वासन दिया गया है कि वह कानून की प्रक्रिया में सहयोग करने के लिए तैयार है और जब भी आवश्यकता होगी वह ईमानदारी से अदालत के समक्ष खुद को उपलब्ध कराएगा और उन सभी शर्तों को स्वीकार करने के लिए भी तैयार है जो न्यायालय उस पर अधिरोपित करेगी। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 22.10.2023 से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

6. विद्वान अपर शासकीय अधिवक्ता ने अभियुक्त के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि अभियुक्त की ओर से उसे जमानत पर मुक्त किये

जाने हेतु केवल कारागार में बितायी गयी अधिक अवधि को आधार बनाया गया है, इसके अतिरिक्त उनके द्वारा इस मामलें में कोई नवीन तथ्य की ओर न्यायालय का ध्यान आकृष्ट नहीं किया गया। इसलिए, अभियुक्त को जमानत पर मुक्त किये जाने हेतु केवल उक्त अभियुक्त द्वारा कारागार में बितायी गयी अधिक अवधि आधार नहीं हो सकता है। उनके द्वारा न्यायालय का ध्यान माननीय उच्चतम न्यायालय के कुछ नजीरों की ओर आकृष्ट करते हुए अनुरोध किया गया कि अभियुक्त जमानत पर मुक्त किये जाने योग्य नहीं है तथा आवेदक का यह द्वितीय जमानत आवेदन पत्र को निरस्त कर दिया जाय।

7. यहां प्रासंगिक तथ्य यह भी है कि इस वाद में बहस तर्क के दौरान जब न्यायालय द्वारा आवेदक के विद्वान अधिवक्ता से पीड़िता के धारा 164 दं०प्र०सं० का बयान कब हुआ?, के संबंध में पूछा गया, तब उनके द्वारा कथन किया गया कि उन्हें इसे तथ्य के संबंध में स्पष्ट तथ्य प्रस्तुत करने हेतु अल्प समय प्रदान कर दिया जाय, किंतु यहांदुर्भाग्यवपूर्ण है कि न्यायालय के समक्ष आवेदक का यह द्वितीय जमानत पत्र प्रस्तुत है, किंतु आवेदक के विद्वान अधिवक्ता उपर्युक्त सुसंगत तथ्य से पूर्णतः अनिभिज्ञ है। पुनः कुछ समय उपरांत उनके द्वारा आगे यह कहा गया कि पीड़िता का उपर्युक्त बयान विवेचक द्वारा कई बार अंकित करने का प्रयास किया गया, लेकिन अंकित नहीं किया जा सका है, जबकि आरोप पत्र दाखिल किया जा चुका है।

8. उभय पक्ष के विद्वान अधिवक्तागण द्वारा दिये गये तर्कों एवं माननीय उच्चतम न्यायालय व उच्चतम न्यायालय द्वारा निम्न नजीरों में प्रतिपादित विधि-व्यवस्था का अनुशीलन किया, जो निम्नवतः-

9. **नदीम अहमद बनाम पश्चिम बंगाल 2005 SCC OnLine SC 117** के मामलें माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया कि केवल मुकदमे के समापन में देरी के आधार पर ज़मानत याचिका स्वीकार नहीं कर सकती, जो निम्नवत हैः-

"अभियोजन पक्ष द्वारा प्रथम दृष्टया मामलें की मौजूदगी, अपराध की गंभीरता और ज़मानत पर रहते हुए धमकी और प्रलोभन द्वारा गवाह के साथ छेड़छाड़ के आरोपों पर विचार किए बिना केवल मुकदमे के समापन में देरी के आधार पर ज़मानत याचिका स्वीकार नहीं कर सकती। चूँकि, उपरोक्त कारक अभियुक्त के ज़मानत मांगने के अधिकार के मूल में जाते हैं, इसलिए इन पर विचार न करना और केवल लंबी कैद के आधार पर ज़मानत देना, ज़मानत देने के उच्च न्यायालय के आदेश

को निष्प्रभावी करता है। यद्यपि किसी अभियुक्त को जमानत के लिए लगातार आवेदन करने का अधिकार है, फिर भी ऐसी अनुवर्ती जमानत याचिकाओं पर विचार करने वाले न्यायालय का यह कर्तव्य है कि वह उन कारणों और आधारों पर विचार करें, जिन पर पिछली जमानत याचिकाएँ खारिज की गई थीं और ऐसे मामलों में न्यायालय का यह भी कर्तव्य है कि वह उन नए आधारों को दर्ज करे जिनके कारण उसे पिछली याचिकाओं में दिए गए दृष्टिकोण से भिन्न दृष्टिकोण अपनाने के लिए प्रेरित किया गया। उक्त आदेश में इस बात पर भी ज़ोर दिया कि इस न्यायालय के पिछलें आदेशों की अनदेखी करना, समान पक्षों के बीच एक मामले में दिए गए उच्च न्यायालय के निर्णयों की बाध्यकारी प्रकृति के सिद्धांत का उल्लंघन है।"

10. महाराष्ट्र राज्य बनाम बुद्धिकोटा सुभा रावः 1989 सप्लिमेंट (2) एससीसी 605 के मामले में माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि यदि एक बार कोई जमानत आवेदन खारिज कर दिया गया हो तो पूर्व में प्रस्तुत किये गये तथ्य स्थिति में कोई बदलाव किए बिना द्वितीय जमानत आवेदन पत्र को मंजूर करना वस्तुतः पहले के फैसले को खारिज करने जैसा होगा, तथा यह एक ऐसा महत्वपूर्ण परिवर्तन है, जिसका पहले के निर्णय पर सीधा प्रभाव पड़ता है, न कि केवल औपचारिक परिवर्तन। इसे निम्नानुसार माना गया है:-

"7. Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of undertrials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such Application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail.

All such pending bail applications were rejected by Puranik, J. by a common order on 6-6-1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995 of 1989 otherwise he would have disposed it of by the very same common order. Before the ink was dry on Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J.; in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with dispatch. It will also result in consistency. In their view that we take we are fortified by the observations of this Court in para 5 of the judgment in Shahzad Hasan Khan v. Ishtiaq Hasan Khan [(1987) 2 SCC 684]. For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint demands that we say no more.

11. **सत्यपाल बनाम यूपी राज्य, 1998 एससीसी ऑनलाइन ऑल 1224: (1998) 37 एसीसी 287** के मामले में इस न्यायालय की एकल न्यायपीठ द्वारा एक प्रश्न का जवाब देते हुए निर्णय किया था कि क्या एक नया तर्क जो पहले उपलब्ध था उसे दूसरे जमानत आवेदन में आगे बढ़ाने की अनुमति दी जानी चाहिए या नहीं, खण्डपीठ के समक्ष प्रश्न इस प्रकार थाः-

"1. The following question has been referred by learned single Judge to be decided by this Court:--

"Whether a fresh argument in a second bail application for an accused should be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected"."

The Division Bench held that a fresh argument in a second bail application cannot be allowed to be advanced on those very facts which were available to the accused at the time of the moving and rejection of the first bail application. The answer as given to the referred question is as follows:-

XXX XXX XXX XXX

"9.....Accordingly our answer to the question referred is that fresh arguments in a second bail application for an accused cannot be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected."

12. माननीय उच्चतम न्यायालय ने **म.प्र. राज्य बनाम काजादः (2001) 7 एससीसी 673** के मामले में जोर देते हुए कहा कि यद्यपि क्रमिक जमानत आवेदन स्वीकार्य हैं, लेकिन बदली हुई परिस्थितियों में। इसे निम्नानुसार माना गया है:-

"8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169: 2001 SCC (Cri) 113] and various other judgments."

13. इसके अलावा, माननीय उच्चतम न्यायालय ने **कल्याण चंद्र सरकार बनाम राजेश रंजन : (2005) 2 एससीसी 42** के मामले में जोर देते हुए कहा कि यदि तथ्यों में परिवर्तन या कानून में कोई बदलाव होता है जो पिछले आदेश को खारिज कर देगा तो बाद में जमानत आवेदन पत्र दायर किया जा सकता है, इसे निम्नानुसार माना गया है:-

"8. On 23-9-2002 the accused-respondent moved the eighth bail application which came to be allowed by the High Court by its order dated 23-5-2003 solely on the ground that the accused-respondent had undergone incarceration for a period of 3 years and that there was no likelihood of the trial being concluded in the near future and an appeal filed against the said grant of bail came to be allowed (Ed. In Kalyan Chandra Sarkar v. Rajesh Ranjan, op. cit. fn. 2, above) on the ground that the High Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the witness by threat and inducement

*when on bail. This Court held [Ed.: In Kalyan Chandra Sarkar v. Rajesh Ranjan, op. cit. fn. above] that since the above factors go to the root of the right of the accused to seek bail, non-consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order of the High Court granting bail. This Court also observed that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. This Court in that order also found fault with the High Court for not recording any fresh grounds while granting bail and for not taking into consideration the basis on which earlier bail applications were rejected. The Court also emphasised in the said order that ignoring the earlier orders of this Court is violative of the principle of binding nature of the judgments of the superior court rendered in a lis between the same parties, and noted that such approach of the High Court in effect amounts to ignoring or overruling and thus rendering ineffective the principles enunciated in the earlier orders especially of the superior courts. On that basis, the appeal of the complainant challenging the grant of bail came to be allowed cancelling the bail granted to the respondent. This order of this Court is reported as Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528: 2004 SCC (Cri) 1977]." **** "20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country."*

उपर्युक्त नजीरों के विहंगम परिशीलनोपरांत इस न्यायालय का अभिमत है कि अभियुक्त की ओर से उसे जमानत पर मुक्त किये जाने हेतु केवल कारागार में बितायी गयी अधिक अवधि को आधार बनाया गया है, इसके अतिरिक्त उनके द्वारा इस मामलें में कोई युक्तियुक्त एवं सुसंगत नवीन तथ्य की ओर न्यायालय का ध्यान आकृष्ट नहीं किया गया। इसलिए, अभियुक्त को जमानत पर मुक्त किये जाने हेतु उसके द्वारा केवल कारागार में बितायी गयी अधिक अवधि आधार नहीं हो सकता है।

14. वर्तमान मामले में जमानत संबंधी विधि के स्थापित सिद्धांतों को ध्यान में

रखते हुए एवं उभय पक्षकारों के विद्वान अधिवक्ताओं के कथनों, आरोपों की प्रकृति, आवेदक की भूमिका और इस मामलें के इस तथ्य को ध्यान में रखते हुए कि अभियोजन पक्ष ने, अभिलेख पर उपलब्ध सामग्री के आधार पर, अभियुक्त के विरुद्ध प्रथम दृष्टया मामला स्थापित किया है और न्यायालय का यह भी मत है कि अभिलेख पर लाए गए तथ्यों से स्पष्ट रूप से संकेत मिलता है कि आवेदक को जमानत पर मुक्त किये जाने हेतु कोई नवीन उपयुक्त आधार प्रस्तुत नहीं किया गया तथा उक्त अभियुक्त को ज़मानत पर रिहा करने से मुकदमें की प्रगति बाधित होना संभाव्य है। इसलिए, मामलें के गुण-दोष पर बिना कोई विचार व्यक्त किए यह जमानत आवेदन पत्र स्वीकार किए जाने योग्य नहीं है। अतः यह जमानत आवेदन पत्र अस्वीकार किया जाता है।

15. तद्नुसार, यह द्वितीय जमानत आवेदन पत्र निरस्त किया जाता है।

(2025) 9 ILRA 1225
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.09.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Application No. 11856 of 2025

Julfikar Ali **...Applicant**

Versus

State of U.P. **...Respondent**

Counsel for the Applicant:
Amit Misra

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to bail under the NDPS Act despite recovery of 101 kg cannabis, considering alleged non-compliance with Standing Order No. 1 of 1989 regarding sampling procedure and the restrictive provisions of Section 37 NDPS Act.

HEADNOTES

Criminal Law – Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8, 20, 35, 37, 42, 50, 52-A, 53-A, 54, 67 - Constitution of India - Article 21- Bail Application – Police raid - recovery on the spot of 101 kg cannabis - FIR lodged under sections 8/20 of the NDPS Act – recovering of cannabis from joint possession of three accused – plea taken that no independent witnesses, and non-compliance with Standing Order No. 1 of 1989 regarding sampling, as only two out of 38 packets were tested – relied upon '*Aman Fidel Chris vs. NCB*, *Nadeem Ahamed vs. State of West Bengal'*, and '*Noor Aga vs. State of Punjab'*, applicant pleaded that statutory instructions must be strictly followed – Court finds non-compliance with Standing Order mandatory, leading to adverse inference – court held that the applicant's contention on improper sampling was well-founded, noted absence of rebuttal by prosecution, and emphasized Article 21 and *Dataram Singh vs. State of U.P.* – Hence, bail granted subject to strict conditions against tampering, intimidation, misuse of liberty, or criminal activity, with liberty to cancel bail upon violation – Application Allowed. (Para – 13, 14, 15)

Application Allowed. (E-11)

CASE LAW CITED

Aman Fidel Chris vs. Narcotics Control Bureau [Crl. Appeal No. 1027/2015 & Clr. Misc. Bail Application No. 511/2019 and Crl. M.A. No. 1660/2020] - **Nadeem Ahamed vs. State of West Bengal** [Appeal No. 3573-3574 of 2025

(Arising out of SLP (Clr.) Nos. 9446-9447 of 2025) 2025:INSC:993] - **Union of India vs. Ratan Malik** (2009) 2 SCC 624 - **Union of India vs. Ram Samujh** (1999) 9 SCC 429 – **Shushant Gupta Vs. Union of India** 2014 (3) ACR 2564 - **State of M.P. vs. Kajd** (2001) 7 SCC 673 - **Union of India vs. Niyazuddin** SK (AIR 2017 SC 3932) - **State of Kerala vs. Rajesh** (AIR 2020 SC 721) - **Satpal Singh vs. State of Punjab** (MANU/SC/0413/2018, (2018) 12 SCC 813) - **Shailendra Kumar Gupta vs. State of U.P.** (MANU/UP/0653/2020) - **Mohan Lal vs. State of Punjab** (2018) SCC Online SC 974 - **Noor Aga vs. State of Punjab** (2008 (3) JIC 640 (SC) - **Union of India vs. Shiv Shankar Keshar** (2007) 7 SCC 798 - **Dataram Singh vs. State of U.P. and Another** (2018) 3 SCC 22) - State of Kerala 7 others Vs. **Kurian Abraham (P) Ltd. And Another** [2008 (3) SCC 582 – **Union of India Vs. Azadi Bachao Andolan** [2004 (10) SCC 1].

LIST OF ACTS

Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 8, 20, 35, 37, 42, 50, 52-A, 53-A, 54, 67) - Constitution of India - Article 21 - Standing Order No. 1 of 1989 (Sampling procedure).

LIST OF KEYWORDS

Bail Application under NDPS Act - Sampling procedure - Standing Order compliance - Procedural lapses - Joint possession - Adverse inference - Restrictive bail provisions - Article 21 rights - Tampering with evidence - Conditions of bail.

CASE ARISING FROM

Case No. 91/2025, Police Station Majhola, District Moradabad - Offence under Sections 8/20 NDPS Act - Recovery of 101 kg cannabis from Creta vehicle on 04.02.2025.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amit Mishra.
Counsel for Respondent(s): GA.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक की ओर से मु०अ०सं० 91/2025, अंतर्गत धारा 8/20 एन.डी.पी.एस. एक्ट, थाना मझौला, जिला मुरादाबाद में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2. आवेदक के विद्वान अधिवक्ता एवं राज्य की तरफ से विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

3. आवेदक के विद्वान अधिवक्ता की तरफ से आज प्रत्युत्तर शपथपत्र दाखिल किया गया, जिसे पत्रावली पर रखा जाय।

4. संक्षेप में अभियोजन कथानक इस प्रकार है कि दिनांक 04.02.2025 को एस०आई० संजय यादव जब थाना मझौला क्षेत्र तिराहे के पास आये तभी मुखबिर सूचना व सर्विलान्स साधनों से सूचना मिली की 03 व्यक्ति गांजा लेकर कही जाने की फिराक में है। तत्पश्चात दबिश देकर इन सभी 03 व्यक्तियों को मौके पर पकड़ लिया। पकड़े गए व्यक्तियो में से चालक सीट पर बैठे व्यक्ति ने अपना नाम नरेन्द्र कुमार, चालक सीट की बगल सीट पर बैठे दूसरे व्यक्ति ने अपना नाम नितिन कुमार व पिछली सीट पर बैठे तीसरे व्यक्ति ने अपना नाम जुल्फिकार अली बताया। पकडे गए अभियुक्तगण के कब्जे से बरामद गाड़ी क्रेटा में पिछली सीट व पिछली सीट के पायदानों व गाड़ी की डिक्की में रखे प्लास्टिक के पैकेटों में कुल

38 पैकेट जिनपर टेप लगा लगा है, जिनमें 08 पैकेट 03 किलोग्राम, 01 पैकेट 04 किलोग्राम, 29 पैकेट 2.5 किलोग्राम वजन के हैं, कुल वजन 101 किलोग्राम उच्च क्वालिटी का गांजा बरामद हुआ। बरामदशुदा कुल 38 पैकेटों में से दो पैकेटों से जाँच हेतु नमूने लिये गये एवं उन्हें प्रयोगशाला भेज दिया गया।

5. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवंफर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। आवेदक के निजी कब्जे से 101 किलोग्राम गांजा बरामद नहीं हुआ है। गांजे की कथित बरामदगी एन.डी.पी. एस. अधिनियम की धारा 42, 50 एवं 52-ए के अनिवार्य प्रावधानों का पालन किए बिना की गई है। प्रतिबंधित पदार्थ की कथित बरामदगी तीन व्यक्तियों के संयुक्त कब्जे से बरामद दिखाई गई है और कथित बरामदगी का कोई स्वतंत्र प्रत्यक्षदर्शी नहीं है। अभियोजन पक्ष की पूरी कहानी इस तथ्य से भी संदिग्ध हो जाती है कि बरामदगी दिन के समय सार्वजनिक क्षेत्र से बताई गई है और अभियोजन पक्ष द्वारा एक भी स्वतंत्र गवाह पेश नहीं किया गया है। आवेदक के विद्वान अधिवक्ता द्वारा विशिष्ट तौर पर इस तथ्य का उल्लेख किया गया है कि 38 पैकेट प्रतिबंधित सामग्री बरामद की गई, लेकिन परीक्षण हेतु नमूने केवल दो पैकेटों से लिए गए और परीक्षण हेतु प्रयोगशाला भेजे गये नमूनों की कोई आख्या आज तक प्राप्त नहीं हुई।

6. आवेदक के विद्वान अधिवक्ता द्वारा अग्रिम यह कथन किया गया कि बरामद प्रतिबंधित पदार्थ के नमूने लेते समय स्थायी आदेश सं० 01/1989, दिनांकित 13.06.1989 में वर्णित सामान्य प्रक्रिया का पालन नहीं किया गया है। उन्होंने स्थायी आदेश में वर्णित खंड 2.1 से 2.8 की तरफ न्यायालय का ध्यान आकृष्ट कराया। जो निम्न हैः-

"2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) were a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in

case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

7. विद्वान अधिवक्ता द्वारा अग्रिम तर्क प्रस्तुत किया गया है कि पूर्वोक्त स्थायी आदेश के उपरोक्त खंडों को पढ़ने से स्पष्ट है कि विपक्षी को फील्ड टेस्टिंग किट की मदद से कथित रूप से बरामद प्रत्येक पैकेट से एक नमूना लेना आवश्यक था तथा सभी पैकेटों से सामग्री को मिलाने और फिर प्रतिनिधि नमूना लेने का प्रावधान स्थायी आदेश में नहीं है, क्योंकि यदि ऐसा किया जाता है तो नमूना संबंधित पैकेट का प्रतिनिधि नमूना नहीं रह जाएगा। वर्तमान मामले में आवेदक के कब्जे से कथित रूप से 38 पैकेट बरामद किए गए थे और इसलिए स्थायी आदेश संख्या 1 वर्ष 1989 के खंड 2.4 में दी गई प्रक्रिया का पालन किया जाना आवश्यक था, क्योंकि कथित प्रतिबंधित पदार्थ केवल 38 पैकेट थे। उन्होंने तर्क किया कि 38 पैकेटों में कथित प्रतिबंधित पदार्थ में से मात्र 2 पैकेट से नमूना लेना, आवेदक के मामले के लिए गंभीर पूर्वाग्रह का कारण बना है, क्योंकि यह पता नहीं लगाया जा सकता है कि सभी 38 पैकेटों में कथित प्रतिबंधित गांजा था भी या नहीं।

8. आवेदक के विद्वान अधिवक्ता द्वारा अपने तर्कों के समर्थन में न्यायालय का ध्यान दिल्ली उच्च न्यायालय द्वारा निर्णीत **Aman Fidel Chris Vs. Narcotics Control Bureau, Crl. Appeal No. 1027 of 2015 & Crl. M.B. 511 of 2019** एवं **Crl. M.A. 1660 of 2020** की तरफ आकृष्ट कराया, जिसमें बरामदशुदा प्रत्येक पैकेट से अलग-अलग नमूना न लेने की वजह से अभियोजन पक्ष के आचरण को पूर्वोक्त स्थायी आदेश का उल्लंघन माना है। अग्रिम आवेदक के विद्वान अधिवक्ता द्वारा अपने तर्कों के समर्थन में माननीय सर्वोच्च न्यायालय द्वारा निर्णीत **Nadeem Ahamed vs. State of West**

Bengal, Criminal Appeal Nos. 3573-3574 of 2025 (Arising out of SLP (Crl.) Nos. 9447 of 2025), 2025:INSC:993 की तरफ भी न्यायालय का ध्यान आकृष्ट कराया। पुनः उनका यह भी कथन है कि आवेदक की तरफ से यह आश्वासन दिया गया है कि वह कानून की प्रक्रिया में सहयोग करने के लिए तैयार है और जब भी आवश्यकता होगी वह ईमानदारी से अदालत के समक्ष खुद को उपलब्ध कराएगा और उन सभी शर्तों को स्वीकार करने के लिए भी तैयार है जो न्यायालय उस पर अधिरोपित करेगी। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 04.02.2025 से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

9. (क) विद्वान अपर शासकीय अधिवक्ता द्वारा जमानत प्रार्थनापत्र का विरोध करते हुए कथन किया कि ऐसे मामलों में आवेदक को जमानत नहीं दी जा सकती है। आवेदक के जमानत प्रार्थनापत्र के विरोध के संबंध में उनके द्वारा निम्नलिखित न्याय-विधियों की तरफ न्यायालय का ध्यान आकृष्ट कराया, जो निम्न हैं:-

"1. Union of India vs. Ratan Malik (2009) 2 SCC 624

2. Union of India vs. Ram Samujh and Another (1999) 9 SCC 429

3. Shushant Gupta vs. Union of India 2014 (3) ACR 2564

4. State of M.P. vs. Kajd (2001) 7 SCC 673

5. Union of India vs. Niyazuddin SK and Ors AIR 2017 SC 3932

6. State of Kerala and Ors vs. Rajesh and Ors AIR 2020 SC 721

7. Satpal Singh vs. State of Punjab MANU/SC/0413/2018,(2018) 12 SCC 813

8. Shailendra Kumar Gupta vs. State of U.P. MANU/UP/0653/2020"

(ख). पुनः विद्वान अपर शासकीय अधिवक्ता द्वारा कथन किया गया है कि आवेदक के विद्वान अधिवक्ता द्वारा दिल्ली उच्च न्यायालय के जिस निर्णय का कथन किया गया है, वह आपराधिक अपील के संबंध में है और एन.डी.पी.एस. अधिनियम की धारा 37, 35, 67, 53-ए और 54 के मद्देनजर, वह उस मामले पर लागू नहीं होगा जहां केवल जमानत पर विचार शामिल है। माननीय सर्वोच्च न्यायालय ने Mohan Lal Vs. State of Punjab, (2018) SCC Online SC 974 के मामले में अभियोजन के ऐसे आचरण को बरकरार रखा है। माननीय दिल्ली उच्च न्यायालय ने स्थायी आदेश संख्या 1 वर्ष 1989के खंड 2.3, 2.5 और 2.6 को नजरअंदाज कर दिया है, जो इसके खंड 2.4 के अपवाद के रूप में कार्य करते हैं। हालाँकि, खण्ड 2.4 केवल परामर्शात्मक है, अनिवार्य नहीं है तथा इसमें प्रत्येक पैकेट से एक नमूना लेने का प्रावधान है। वर्तमान मामले में स्थायी आदेश के खंड 2.8 का अनुपालन किया गया है। माननीय दिल्ली उच्च न्यायालय द्वारा उद्धृत निर्णय में अभियोजन पक्ष द्वारा संदर्भित निर्णयों पर विचार नहीं किया गया है। नमूना लेने से संबंधित वक्तव्य जमानत प्रार्थनापत्र में निहित तर्कों से परे है

और पंचनामा, बयानो का अंकन आदि की अन्य कानूनी आवश्यकताओं का वर्तमान मामले में पूरी तरह से पालन किया गया है।

10. आवेदक की तरफ से प्रस्तुत उपरोक्त तर्कों पर विचार करने के बाद, इस न्यायालय ने पाया कि आवेदक की तरफ से यह तर्क कि स्थायी आदेश के खंड 2.4 का अनुपालन नहीं किया गया था और आवेदक की कार से अभियोजन पक्ष द्वारा कथित रूप से बरामद किए गए सभी 38 पैकेटों से कोई प्रतिनिधि नमूने नहीं लिए गए थे, अच्छी तरह से स्थापित है। **Noor Aga Vs. State of Punjab and Another, 2008 (3) JIC 640 (SC)** के मामले में सर्वोच्च न्यायालय ने विद्वान अपर शासकीय अधिवक्ता के इस उत्तर को स्वीकार नहीं किया कि स्थायी आदेश का खंड 2.4 केवल परामर्शात्मक है, अनिवार्य एवं बाध्यकारी नहीं है। माननीय सर्वोच्च न्यायालय ने प्रस्तर संख्या 123, 124 और 125 में यह माना है कि उक्त स्थायी आदेश और विधिक स्वीकृति प्राप्त प्राधिकारी द्वारा जारी अन्य दिशा-निर्देशों का अधीनस्थ प्राधिकारियों द्वारा अनुपालन किया जाना आवश्यक है। उक्त प्रस्तर निम्न हैं:-

"123. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis--vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

124. Recently, this Court in ***State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582],*** *following the earlier decision of this Court in* ***Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1]*** *held that statutory instructions are mandatory in nature.*

125. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

11. आवेदक के विद्वान अधिवक्ता द्वारा दिल्ली उच्च न्यायालय के जिस निर्णय का अनुपालन किया गया है, वह **नूर आगा (सुप्रा)** के मामले में सर्वोच्च न्यायालय के निर्णय के अनुरूप है, जिसे सर्वोच्च न्यायालय ने **Mohan Lal Vs. State of Punjab, (2018) SCC Online SC 974** के मामले में दोहराया है। विद्वान अधिवक्ता द्वारा स्थापित किए गए मुद्दे का जवाब विद्वान अपर शासकीय अधिवक्ता द्वारा प्रस्तुत वाद कानूनों के संकलन में नहीं दिया गया है। वे केवल इस प्रश्न से संबंधित हैं कि एन.डी.पी.एस. अधिनियम के

तहत मामलों में अभियुक्तों को जमानत दी जानी चाहिए या नहीं। न्यायालय का उदार दृष्टिकोण अनुचित है और जमानत केवल असाधारण परिस्थितियों में ही दी जा सकती है। विद्वान अपर शासकीय अधिवक्ता ने ऐसा कोई निर्णय उद्धृत नहीं किया है, जिससे यह स्पष्ट हो कि **नूर आगा (सुप्रा)** के मामले में प्रस्तर संख्या 123 से 125 में सर्वोच्च न्यायालय द्वारा निर्धारित अनुपात सही नहीं है।

12. विद्वान अपर शासकीय अधिवक्ता का दूसरा तर्क यह कि जमानत आवेदन पर विचार के चरण में आपराधिक अपील में पारित निर्णय प्रासंगिक नहीं है, जिस पर विचार करने की आवश्यकता है। इस बात से इनकार नहीं किया जा सकता कि एन.डी.पी.एस. अधिनियम की धारा 37 में यह प्रावधान है कि न्यायालय को जमानत के प्रति नकारात्मक रुख अपनाना चाहिए और सिर्फ तब जब वह संतुष्ट हो जाए कि यह मानने के उचित आधार हैं कि अभियुक्त कथित अपराध का दोषी नहीं है और जमानत पर रहते हुए उसके द्वारा कोई अपराध करने की संभावना नहीं है, उसे जमानत पर रिहा किया जा सकता है। वर्तमान मामले में स्थायी आदेश के तहत प्रदान की गई नमूना लेने की प्रक्रिया का अनुपालन नहीं किया गया है, जिसका वैधानिक बल है और इसलिए आवेदक को परीक्षण के बाद दोषी नहीं ठहराया जा सकता है।

13. यहाँ प्रासंगिक है कि माननीय सर्वोच्च न्यायालय ने **Union of India vs. Shiv Shankar Keshar, (2007) 7 SCC 798** के मामले में माना है कि अधिनियम की धारा 37 के संदर्भ में जमानत के लिए आवेदन पर विचार करते समय न्यायालय को दोषी नहीं होने का निष्कर्ष दर्ज करने के लिए नहीं कहा जाता है। यह मूलतः अभियुक्त को जमानत पर रिहा करने के प्रश्न तक ही सीमित उद्देश्य के लिए है, जिसके लिए न्यायालय से यह देखने को कहा जाता है कि क्या यह मानने के लिए उचित आधार हैं कि अभियुक्त दोषी नहीं है तथा ऐसे आधारों के अस्तित्व के बारे में न्यायालय अपनी संतुष्टि स्पष्ट करता है। लेकिन न्यायालय को इस मामले पर इस तरह विचार नहीं करना चाहिए जैसे कि वह रिहा करने का निर्णय सुना रहा हो और दोषी न होने का निष्कर्ष दर्ज कर रहा हो।

14. उभयपक्ष के विद्वान अधिवक्तागण के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति, भारत के संविधान के अनुच्छेद 21 के व्यापक अधिदेश और **Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22** में माननीय सर्वोच्च न्यायालय द्वारा निर्णीत निर्णय को ध्यान में रखते हुए एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

15. अतः वाद के गुण-दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की सतुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के कोई भी दो प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ **जमानत** पर छोड़ दिया जाय।

i. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

ii. आवेदक अभियोजन साक्षियों व पीड़िता/ शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।

iii. आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।

iv. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरूपयोग नही करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

v. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

16. उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।

(2025) 9 ILRA 1232
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.09.2025

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Application No. 11861 of 2025

Nitin Kumar ...Applicant

Versus

State of U.P. ...Respondent

Counsel for the Applicant:
Amit Mishra

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to bail under the NDPS Act despite recovery of 101 kg cannabis, considering alleged non-compliance with Standing Order No. 1 of 1989 regarding sampling procedure and the restrictive provisions of Section 37 NDPS Act.

HEADNOTES

Criminal Law – Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8, 20, 35, 37, 42, 50, 52-A, 53-A, 54, 67 - Constitution of India - Article 21- Bail Application – Police raid - recovery on the spot of 101 kg cannabis - FIR lodged under sections 8/20 of the NDPS Act – recovering of cannabis from joint possession of three accused – plea taken that no independent witnesses, and non-compliance with Standing Order No. 1 of 1989 regarding sampling, as only two out of 38 packets were tested – relied upon '*Aman Fidel Chris vs. NCB*, *Nadeem Ahamed vs. State of West Bengal'*, and '*Noor Aga vs. State of Punjab'*, applicant pleaded that statutory instructions must be strictly followed – Court

finds non-compliance with Standing Order mandatory, leading to adverse inference – court held that the applicant's contention on improper sampling was well-founded, noted absence of rebuttal by prosecution, and emphasized Article 21 and *Dataram Singh vs. State of U.P.* – Hence, bail granted subject to strict conditions against tampering, intimidation, misuse of liberty, or criminal activity, with liberty to cancel bail upon violation – Application Allowed. (Para – 13, 14, 15)

Application Allowed. (E-11)

CASE LAW CITED

Aman Fidel Chris vs. Narcotics Control Bureau [Crl. Appeal No. 1027/2015 & Clr. Misc. Bail Application No. 511/2019 and Crl. M.A. No. 1660/2020] - **Nadeem Ahamed vs. State of West Bengal** [Appeal No. 3573-3574 of 2025 (Arising out of SLP (Clr.) Nos. 9446-9447 of 2025) 2025:INSC:993] - **Union of India vs. Ratan Malik** (2009) 2 SCC 624 - **Union of India vs. Ram Samujh** (1999) 9 SCC 429 – **Shushant Gupta Vs. Union of India** 2014 (3) ACR 2564 - **State of M.P. vs. Kajd** (2001) 7 SCC 673 - **Union of India vs. Niyazuddin** SK (AIR 2017 SC 3932) - **State of Kerala vs. Rajesh** (AIR 2020 SC 721) - **Satpal Singh vs. State of Punjab** (MANU/SC/0413/2018, (2018) 12 SCC 813) - **Shailendra Kumar Gupta vs. State of U.P.** (MANU/UP/0653/2020) - **Mohan Lal vs. State of Punjab** (2018) SCC Online SC 974 - **Noor Aga vs. State of Punjab** (2008 (3) JIC 640 (SC) - **Union of India vs. Shiv Shankar Keshar** (2007) 7 SCC 798 - **Dataram Singh vs. State of U.P. and Another** (2018) 3 SCC 22) - State of Kerala 7 others Vs. **Kurian Abraham (P) Ltd. And Another** [2008 (3) SCC 582 – **Union of India Vs. Azadi Bachao Andolan** [2004 (10) SCC 1].

LIST OF ACTS

Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 8, 20, 35, 37, 42, 50, 52-A, 53-A, 54, 67) - Constitution of India - Article 21 - Standing Order No. 1 of 1989 (Sampling procedure).

LIST OF KEYWORDS

Bail Application under NDPS Act - Sampling procedure - Standing Order compliance - Procedural lapses - Joint possession - Adverse inference - Restrictive bail provisions - Article 21 rights - Tampering with evidence - Conditions of bail.

CASE ARISING FROM

Case No. 91/2025, Police Station Majhola, District Moradabad - Offence under Sections 8/20 NDPS Act - Recovery of 101 kg cannabis from Creta vehicle on 04.02.2025.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amit Mishra.
Counsel for Respondent(s): GA.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक की ओर से मु०अ०सं० 91/2025, अंतर्गत धारा 8/20 एन.डी.पी.एस. एक्ट, थाना मझौला, जिला मुरादाबाद में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2. आवेदक के विद्वान अधिवक्ता एवं राज्य की तरफ से विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

3. आवेदक के विद्वान अधिवक्ता की तरफ से आज प्रत्युत्तर शपथपत्र दाखिल किया गया, जिसे पत्रावली पर रखा जाय।

4. संक्षेप में अभियोजन कथानक इस प्रकार है कि दिनांक 04.02.2025 को एस०आई० संजय यादव जब थाना मझौला क्षेत्र तिराहे के पास आये तभी मुखबिर सूचना व सर्विलान्स साधनों से सूचना मिली की 03 व्यक्ति गांजा लेकर कही जाने की फिराक में है। तत्पश्चात

दबिश देकर इन सभी 03 व्यक्तियों को मौके पर पकड़ लिया। पकड़े गए व्यक्तियों में से चालक सीट पर बैठे व्यक्ति ने अपना नाम नरेन्द्र कुमार, चालक सीट की बगल सीट पर बैठे दूसरे व्यक्ति ने अपना नाम नितिन कुमार व पिछली सीट पर बैठे तीसरे व्यक्ति ने अपना नाम जुल्फिकार अली बताया। पकडे गए अभियुक्तगण के कब्जे से बरामद गाड़ी क्रेटा में पिछली सीट व पिछली सीट के पायदानों व गाड़ी की डिक्की में रखे प्लास्टिक के पैकेटों में कुल 38 पैकेट जिनपर टेप लगा लगा है, जिनमें 08 पैकेट 03 किलोग्राम, 01 पैकेट 04 किलोग्राम, 29 पैकेट 2.5 किलोग्राम वजन के हैं, कुल वजन 101 किलोग्राम उच्च क्वालिटी का गांजा बरामद हुआ। बरामदशुदा कुल 38 पैकेटों में से दो पैकेटों से जाँच हेतु नमूने लिये गये एवं उन्हें प्रयोगशाला भेज दिया गया।

5. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। आवेदक के निजी कब्जे से 101 किलोग्राम गांजा बरामद नहीं हुआ है। गांजे की कथित बरामदगी एन.डी.पी. एस. अधिनियम की धारा 42, 50 एवं 52-ए के अनिवार्य प्रावधानों का पालन किए बिना की गई है। प्रतिबंधित पदार्थ की कथित बरामदगी तीन व्यक्तियों के संयुक्त कब्जे से बरामद दिखाई गई है और कथित बरामदगी का कोई स्वतंत्र प्रत्यक्षदर्शी नहीं है। अभियोजन पक्ष की पूरी कहानी इस तथ्य से भी संदिग्ध हो जाती है कि बरामदगी दिन के समय सार्वजनिक क्षेत्र से बताई गई है और अभियोजन पक्ष द्वारा एक भी स्वतंत्र गवाह पेश नहीं किया गया है। आवेदक के विद्वान अधिवक्ता द्वारा विशिष्ट तौर पर इस तथ्य का उल्लेख किया गया है कि 38 पैकेट प्रतिबंधित सामग्री बरामद की गई, लेकिन परीक्षण हेतु नमूने केवल दो पैकेटों से लिए गए और परीक्षण हेतु प्रयोगशाला भेजे गये नमूनों की कोई आख्या आज तक प्राप्त नहीं हुई।

6. आवेदक के विद्वान अधिवक्ता द्वारा अग्रिम यह कथन किया गया कि बरामद प्रतिबंधित पदार्थ के नमूने लेते समय स्थायी आदेश सं० 01/1989, दिनांकित 13.06.1989 में वर्णित सामान्य प्रक्रिया का पालन नहीं किया गया है। उन्होंने स्थायी आदेश में वर्णित खंड 2.1 से 2.8 की तरफ न्यायालय का ध्यान आकृष्ट कराया। जो निम्न हैः-

"2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in

the cases of opium, ganja and charas (hashish) were a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

7. विद्वान अधिवक्ता द्वारा अग्रिम तर्क प्रस्तुत किया गया है कि पूर्वोक्त स्थायी आदेश के उपरोक्त खंडों को पढ़ने से स्पष्ट है कि विपक्षी को फील्ड टेस्टिंग किट की मदद से कथित रूप से बरामद प्रत्येक पैकेट से एक नमूना लेना आवश्यक था तथा सभी पैकेटों से सामग्री को मिलाने और फिर प्रतिनिधि नमूना लेने का प्रावधान स्थायी आदेश में नहीं है, क्योंकि यदि ऐसा किया जाता है तो नमूना संबंधित पैकेट का प्रतिनिधि नमूना नहीं रह जाएगा। वर्तमान मामले में आवेदक के कब्जे से कथित रूप से 38 पैकेट बरामद किए गए थे और इसलिए स्थायी आदेश संख्या । वर्ष 1989 के खंड 2.4 में दी गई प्रक्रिया का पालन किया जाना आवश्यक था, क्योंकि कथित प्रतिबंधित पदार्थ केवल 38 पैकेट थे। उन्होंने तर्क किया कि 38 पैकेटों में कथित प्रतिबंधित पदार्थ में से मात्र 2 पैकेट से नमूना लेना, आवेदक के मामले के लिए गंभीर पूर्वाग्रह का कारण बना है, क्योंकि यह पता नहीं लगाया जा सकता है कि सभी 38 पैकेटों में कथित प्रतिबंधित गांजा था भी या नहीं।

8. आवेदक के विद्वान अधिवक्ता द्वारा अपने तकों के समर्थन में न्यायालय का ध्यान दिल्ली उच्च न्यायालय द्वारा निर्णीत **Aman**

Fidel Chris Vs. Narcotics Control Bureau, Crl. Appeal No. 1027 of 2015 & Crl. M.B. 511 of 2019 एवं **Crl. M.A. 1660 of 2020** की तरफ आकृष्ट कराया, जिसमें बरामदशुदा प्रत्येक पैकेट से अलग-अलग नमूना न लेने की वजह से अभियोजन पक्ष के आचरण को पूर्वोक्त स्थायी आदेश का उल्लंघन माना है। अग्रिम आवेदक के विद्वान अधिवक्ता द्वारा अपने तर्कों के समर्थन में माननीय सर्वोच्च न्यायालय द्वारा निर्णीत **Nadeem Ahamed vs. State of West Bengal, Criminal Appeal Nos. 3573-3574 of 2025 (Arising out of SLP (Crl.) Nos. 9446-9447 of 2025), 2025:INSC: 993** की तरफ भी न्यायालय का ध्यान आकृष्ट कराया। पुनः उनका यह भी कथन है कि आवेदक की तरफ से यह आश्वासन दिया गया है कि वह कानून की प्रक्रिया में सहयोग करने के लिए तैयार है और जब भी आवश्यकता होगी वह ईमानदारी से अदालत के समक्ष खुद को उपलब्ध कराएगा और उन सभी शर्तों को स्वीकार करने के लिए भी तैयार है जो न्यायालय उस पर अधिरोपित करेगी। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 04.02.2025 से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

9. (क) विद्वान अपर शासकीय अधिवक्ता द्वारा जमानत प्रार्थनापत्र का विरोध करते हुए कथन किया कि ऐसे मामलों में आवेदक को जमानत नहीं दी जा सकती है। आवेदक के जमानत प्रार्थनापत्र के विरोध के संबंध में उनके द्वारा निम्नलिखित न्याय-विधियों की तरफ न्यायालय का ध्यान आकृष्ट कराया, जो निम्न हैं:-

"1. Union of India vs. Ratan Malik (2009) 2 SCC 624

2. Union of India vs. Ram Samujh and Another (1999) 9 SCC 429

3. Shushant Gupta vs. Union of India 2014 (3) ACR 2564

4. State of M.P. vs. Kajd (2001) 7 SCC 673

5. Union of India vs. Niyazuddin SK and Ors AIR 2017 SC 3932

6. State of Kerala and Ors vs. Rajesh and Ors AIR 2020 SC 721

7. Satpal Singh vs. State of Punjab MANU/SC/0413/2018,(2018) 12 SCC 813

8. Shailendra Kumar Gupta vs. State of U.P. MANU/UP/0653/2020"

(ख). पुनः विद्वान अपर शासकीय अधिवक्ता द्वारा कथन किया गया है कि आवेदक के विद्वान अधिवक्ता द्वारा दिल्ली उच्च न्यायालय के जिस निर्णय का कथन किया गया है, वह आपराधिक अपील के संबंध में है और एन.डी.पी.एस. अधिनियम की धारा 37, 35, 67, 53-ए और 54 के मद्देनजर, वह उस मामले पर लागू नहीं होगा जहां केवल जमानत पर विचार शामिल है। माननीय सर्वोच्च न्यायालय ने **Mohan Lal vs. State of Punjab, (2018) SCC Online SC 974** के मामले में अभियोजन के ऐसे आचरण को बरकरार रखा है। माननीय दिल्ली उच्च न्यायालय ने स्थायी आदेश संख्या 1 वर्ष 1989 के खंड 2.3, 2.5 और 2.6 को नजरअंदाज कर दिया है, जो इसके खंड 2.4 के अपवाद के रूप में

कार्य करते हैं। हालाँकि, खण्ड 2.4 केवल परामर्शात्मक है, अनिवार्य नहीं है तथा इसमें प्रत्येक पैकेट से एक नमूना लेने का प्रावधान है। वर्तमान मामले में स्थायी आदेश के खंड 2.8 का अनुपालन किया गया है। माननीय दिल्ली उच्च न्यायालय द्वारा उद्धृत निर्णय में अभियोजन पक्ष द्वारा संदर्भित निर्णयों पर विचार नहीं किया गया है। नमूना लेने से संबंधित वक्तव्य जमानत प्रार्थनापन्त्र में निहित तर्कों से परे है और पंचनामा, बयानों का अंकन आदि की अन्य कानूनी आवश्यकताओं का वर्तमान मामले में पूरी तरह से पालन किया गया है।

10. आवेदक की तरफ से प्रस्तुत उपरोक्त तकों पर विचार करने के बाद, इस न्यायालय ने पाया कि आवेदक की तरफ से यह तर्क कि स्थायी आदेश के खंड 2.4 का अनुपालन नहीं किया गया था और आवेदक की कार से अभियोजन पक्ष द्वारा कथित रूप से बरामद किए गए सभी 38 पैकेटों से कोई प्रतिनिधि नमूने नहीं लिए गए थे, अच्छी तरह से स्थापित है। **Noor Aga Vs. State of Punjab and Another, 2008 (3) JIC 640 (SC)** के मामले में सर्वोच्च न्यायालय ने विद्वान अपर शासकीय अधिवक्ता के इस उत्तर को स्वीकार नहीं किया कि स्थायी आदेश का खंड 2.4 केवल परामर्शात्मक है, अनिवार्य एवं बाध्यकारी नहीं है। माननीय सर्वोच्च न्यायालय ने प्रस्तर संख्या 123, 124 और 125 में यह माना है कि उक्त स्थायी आदेश और विधिक स्वीकृति प्राप्त प्राधिकारी द्वारा जारी अन्य दिशा-निर्देशों का अधीनस्थ प्राधिकारियों द्वारा अनुपालन किया जाना आवश्यक है। उक्त प्रस्तर निम्न हैं:-

"123. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis--vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

124. Recently, this Court in State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582], following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

125. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

11. आवेदक के विद्वान अधिवक्ता द्वारा दिल्ली उच्च न्यायालय के जिस निर्णय का अनुपालन किया गया है, वह नूर आगा (सुप्रा) के मामले में सर्वोच्च न्यायालय के निर्णय के अनुरूप है, जिसे सर्वोच्च न्यायालय ने **Mohan Lal Vs. State of Punjab, (2018) SCC Online SC 974** के मामले में दोहराया है। विद्वान अधिवक्ता द्वारा स्थापित किए गए मुद्दे का जवाब विद्वान अपर शासकीय अधिवक्ता द्वारा प्रस्तुत वाद कानूनों के संकलन में नहीं दिया गया है। वे केवल इस प्रश्न से संबंधित हैं कि एन.डी.पी.एस. अधिनियम के तहत मामलों में अभियुक्तों को जमानत दी जानी चाहिए या नहीं। न्यायालय का उदार दृष्टिकोण अनुचित है और जमानत केवल असाधारण परिस्थितियों में ही दी जा सकती है। विद्वान अपर शासकीय अधिवक्ता ने ऐसा कोई निर्णय उद्धृत नहीं किया है, जिससे यह स्पष्ट हो कि **नूर आगा (सुप्रा)** के मामले में प्रस्तर संख्या 123 से 125 में सर्वोच्च न्यायालय द्वारा निर्धारित अनुपात सही नहीं है।

12. विद्वान अपर शासकीय अधिवक्ता का दूसरा तर्क यह कि जमानत आवेदन पर विचार के चरण में आपराधिक अपील में पारित निर्णय प्रासंगिक नहीं है, जिस पर विचार करने की आवश्यकता है। इस बात से इनकार नहीं किया जा सकता कि एन.डी.पी.एस. अधिनियम की धारा 37 में यह प्रावधान है कि न्यायालय को जमानत के प्रति नकारात्मक रुख अपनाना चाहिए और सिर्फ तब जब वह संतुष्ट हो जाए कि यह मानने के उचित आधार हैं कि अभियुक्त कथित अपराध का दोषी नहीं है और जमानत पर रहते हुए उसके द्वारा कोई अपराध करने की संभावना नहीं है, उसे जमानत पर रिहा किया जा सकता है। वर्तमान मामले में स्थायी आदेश के तहत प्रदान की गई नमूना लेने की प्रक्रिया का अनुपालन नहीं किया गया है, जिसका वैधानिक बल है और इसलिए आवेदक को परीक्षण के बाद दोषी नहीं ठहराया जा सकता है।

13. यहाँ प्रासंगिक है कि माननीय सर्वोच्च न्यायालय ने **Union of India vs. Shiv Shankar Keshar, (2007) 7 SCC 798** के मामले में माना है कि अधिनियम की धारा 37 के संदर्भ में जमानत के लिए आवेदन पर विचार करते समय न्यायालय को दोषी नहीं होने का निष्कर्ष दर्ज करने के लिए नहीं कहा जाता है। यह मूलतः अभियुक्त को जमानत पर रिहा करने के प्रश्न तक ही सीमित उद्देश्य के लिए है, जिसके लिए न्यायालय से यह देखने को कहा जाता है कि क्या यह मानने के लिए उचित आधार हैं कि अभियुक्त दोषी नहीं है तथा ऐसे आधारों के अस्तित्व के बारे में न्यायालय अपनी संतुष्टि स्पष्ट करता है। लेकिन न्यायालय को इस मामले पर इस तरह विचार नहीं करना चाहिए जैसे कि वह रिहा करने का निर्णय सुना रहा हो और दोषी न होने का निष्कर्ष दर्ज कर रहा हो।

14. उभयपक्ष के विद्वान अधिवक्तागण के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध

सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति, भारत के संविधान के अनुच्छेद 21 के व्यापक अधिदेश और **Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22** में माननीय सर्वोच्च न्यायालय द्वारा निर्णीत निर्णय को ध्यान में रखते हुए एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

15. अतः वाद के गुण-दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की संतुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के कोई भी दो प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ **जमानत** पर छोड़ दिया जाय।

1. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

ii. आवेदक अभियोजन साक्षियों व पीड़िता / शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।

iii. आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।

iv. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरूपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

v. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

16. उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।

(2025) 9 ILRA 1239
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.09.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 27331 of 2025

Vikas Tyagi ...Applicant

Versus

State of U.P. ...Respondent

Counsel for the Applicant:
Atul Kumar

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether the accused-applicant of uploading anti-national posts and insulting the Indian

National Flag, should be granted bail during the pendency of trial.

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC), 1973 - Section 436A - Bharatiya Nyaya Sanhita (BNS), 2023 – Sections 152, 192, 197(1), 353(2) - Arms Act, 1959 – Sections 3, 25, 27 - Indian Penal Code (IPC) – Sections 307, 504- Bail Application - FIR - registered under Sections 152, 192, 197(1) & 353(2) of BNS – Allegations of uploading Facebook posts supporting Pakistan and insulting the Indian National Flag - which allegedly incited enmity and threatened public peace – Arrest – trial court rejected his bail plea - present bail application – applicant pleaded that he is innocent, falsely implicated, has not uploaded any anti-national content, and has been in jail since June 2025 – State opposed bail plea, contending that cyber investigation confirmed his Facebook ID was linked to his mobile numbers and IP addresses used for uploading the alleged anti-national posts, including a morphed image insulting the Indian National Flag and his mobile phone used in the crime was seized for forensic examination - Independent witnesses supported the prosecution, warning of communal animosity from his acts - court finds that Independent witnesses corroborated prosecution's case – his criminal history in Arms Act and IPC cases noted - Court emphasized sanctity of the National Flag and seriousness of anti-national acts – hence - Bail application rejected considering gravity of offence and societal impact – consequently, Application stands rejected. (Para – 8, 9, 10)

Application Rejected. (E-11)

CASE LAW CITED

No specific case law cited.

LIST OF ACTS

Bharatiya Nyaya Sanhita (BNS), 2023 - Arms Act, 1959 - Indian Penal Code.

LIST OF KEYWORDS

Bail application - Anti-national post - Facebook ID - Cyber investigation - National Flag insult - Communal disharmony - Criminal history - Public peace - Muzaffar Nagar - BNS 2023.

CASE ARISING FROM

Case Crime No. 104 of 2025, Police Station Charthawal, District Muzaffar Nagar, Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Atul Kumar.
Counsel for Respondent(s): Mr. Rabindra Kumar Singh, learned Additional Government Advocate.

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

1-By means of this bail application, applicant-Vasik Tyagi, who is involved in Case Crime No. 104 of 2025, under Sections 152, 192, 197(1), 353(2) of BNS, 2023, Police Station Charthawal, District Muzaffar Nagar, seeks enlargement on bail during the pendency of trial.

2-The brief facts of the case which are required to be stated are that Sub-Inspector Amit Kumar (PNO. 162654527) got a first information report lodged on 16.05.2025 at 02:41 hours against the accused applicant Vasik Tyagi for the offence under Section 152, 192, 197(1) and 353(2) of BNS, 2023 stating inter-alia that when he along with constable Sonu were on a patrolling duty, checking, search for wanted persons and maintaining peace in the area of Police Station Sirohi, he got an information through social media post that applicant Vasik Tyagi s/o Shafik Tyagi, resident of village Pawti Khurd, Police Station Charthawal, District Muzzafar Nagar has posted/uploaded a post on his Facebook ID in support of Pakistan, in which it was mentioned that "Kamran Bhatti Proud of You. Pakistan Zindabad" and has also put an Indian National Flag on the ground and made a dog sit upon it. F.I.R. further alleges that from the said post, it seems that the applicant is supporting Pakistan while

living in India. When the whole country is struggling with the terrorist activities of Pakistan, the applicant while living in India is uploading anti-national post against his own country i.e. India. This post has hurt the religious sentiments in the area, due to which feelings of enmity, hatred and animosity between the castes and communities is growing on the basis of religion etc. due to which, there is a possibility of breach of peace.

3-During investigation, applicant-Vasik Tyagi was arrested by the police on 07.06.2025. Thereafter he moved bail application before the district Court, which was rejected by the Court of Additional District and Sessions Judge, Muzaffar Nagar, vide order dated 21.07.2025. Thereafter applicant preferred instant bail application before this Court.

4-Heard Mr. Atul Kumar, learned counsel for the applicant and Mr. Rabindra Kumar Singh, learned Additional Government Advocate for the State of U.P.

5-It is argued by learned counsel for the accused-applicant that the applicant is innocent and has not committed the offence as alleged by the prosecution. It is next submitted that the applicant has been falsely implicated in this case. The applicant has neither uploaded, nor liked any anti-national post or hurt the sovereignty and integrity of the country. The applicant is languishing in jail since 07.06.2025, therefore, he may be released on bail.

6- Per contra, learned Additional Government Advocate appearing for the State refuting the above submissions made on behalf of the applicant opposed the prayer for bail of the applicant by contending that :

(i) During investigation, the details of Facebook ID of the applicant being https%//www.facebook.com/wasik-tyagi was obtained from Meta and as per cyber report, based upon the details provided by Meta, the following IP addresses were used in uploading the said social media posts :-

(a) 2409:40d2:006:80000:0000:0000:0000 Time Stamp 2025-06-04 18:49:29 UTC,

(b) 2409:40e6:0256:79d8:80000:0000:0000:0000 Time Stamp 2025-05-14 10:22:00 UTC and

(c) 2409:406e:002d:a9e9:8000:0000:0000:0000 Time Stamp 2025-05-16.

The aforesaid IP addresses were found on the mobile number 8279722726 of the applicant-Vasik Tyagi s/o Safik Tyagi.

(ii) Facebook ID of applicant was also found to be registered on his mobile number 9012228358.

(iii) After great efforts and on the basis of the information given by the informer, applicant-Vasik Tyagi was arrested on 07.06.2025 at 00:20 hours from Pawoti Bus Stand.

(iv) During investigation, a mobile phone of Vivo Company (model VE40, Colour Mint Green, IMEI Nos. 865260071663839 and 865260071663821), which was used in crime was also taken into custody which was provided by applicant's father and thereafter same was sent for forensic examination.

(v) The independent witnesses, namely, Rampal and Ajeet have also got their statements recorded wherein they have supported the prosecution case, stating inter-alia that from the act of the applicant, possibility of animosity among the people on the basis of religious feelings, etc. cannot be ruled out.

(vi) It is also pointed out that applicant is a man of criminal nature and apart from this case, applicant-Vasik Tyagi has a criminal history of following two cases :-

(a) Case Crime No. 461 of 2020, under Sections 3/25/27 Arms Act, Police Station Charthawal, District Muzaffarnagar.

(b) Case Crime No. 454 of 2025, under Sections 307 and 504 I.P.C., Police Station Charthawal, District Muzaffarnagar.

(vii) Lastly, it is submitted that insulting "National Flag" by any Indian citizen is a matter of serious concerned, hence bail application of the applicant is liable to be rejected.

7-Here, it would be apposite to depict the impugned morphed photograph of Indian National Flag showing it's insult and another post uploaded by the applicant through his above Facebook ID, which is a part of case diary:-

8-Having heard learned counsel for the parties and examined the matter in its entirety, I find that during investigation, it is established that the said social media post against India and in support of Pakistan, has been posted/uploaded by the applicant through his Facebook account, as noted above. Learned counsel for the applicant could not give satisfactory reply about posting/uploading the aforesaid posts. The comment made by applicant while insulting Indian National Flag that *'Ab to kutty b mot rahe h'* is a matter of grave concern. Considering the materials available on record, it is apparent that the feelings of the applicant for this country i.e. India is not patriotic and prima-facie it appears that he had intentionally posted the said posts with a view to lower down the dignity of India. This Court is also of the view that the said posts uploaded by the applicant through his Facebook account are provocative, objectionable and capable of inciting communal disharmony and disturbing public peace and order. The said posts indicate inclination towards glorification of anti-national ideology, which cannot be ignored.

9-Here, it is relevant to mention that the Indian National Flag is symbol of pride and patriotism. It represents the hope and aspiration of the people of India. The top saffron colour indicates the strength and courage of the country. The white middle band indicates peace and truth with Dharma Chakra. The green shows the fertility, growth and auspiciousness of the land. Every Indian citizen must safeguard and protect the National Flag of its dignity and honour. The Indian National Flag should not be intentionally allowed to touch the ground or the floor. It should be revered and any comment or insult, is a punishable offence by law. Act of insulting

the national honour by burn, mutilates, defiles, destroys, tramples upon is an offence. Any person, who is directly or indirectly involved in maligning the image of our country (India) and National flag in any manner are hazardous for the society, hence such persons are not liable for any sympathetical consideration.

10-As a fall out and consequence of above discussions as well as considering the overall facts and circumstances of the case, keeping in view the submissions advanced on behalf of parties, nature of the posts allegedly posted / shared by the applicant on social media platform as noted above, gravity of offence and their potential impact on societal harmony, role assigned to applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

11-Accordingly, the bail application of applicant is **rejected**.

(2025) 9 ILRA 1243
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.09.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Criminal Revision No. 922 of 2025

Master X ...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Revisionist:
Manoj Kumar Singh

Counsel for the Opposite Parties:
G.A., Gopal Ji Shukla, Rajesh Kumar Verma

Issue for Consideration

Whether the Appellate Court was justified in setting aside the order of the Juvenile Justice Board declaring the accused as a juvenile solely on the basis of documentary evidence and in directing ossification test for determination of age, in view of material discrepancies in school and birth records, under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 — s.94; s.102 — Determination of age — Documentary evidence — Conflicting school records — Birth certificate — Parivar register — Ossification test — When permissible — Appellate interference — Revisional scope- Appellate Court order upheld- revision dismissed.

Held:

Section 94(2) of the Juvenile Justice Act, 2015 prescribes a hierarchy of evidence for age determination. Preference is to be given to school or matriculation certificates, followed by birth certificate issued by municipal authority or panchayat, and only in the absence of reliable documentary evidence, ossification or medical age determination test may be directed. [Paras 8–9]

In the present case, the Juvenile Justice Board relied upon the date of birth recorded as 02.08.2010 in the high school mark-sheet and parivar register, whereas the school register of the first attended primary school, proved by the Principal on oath, recorded the date of birth as 03.07.2006. The existence of such material inconsistency in foundational documents rendered the documentary evidence unreliable. [Paras 7, 9]

Where documentary evidence suffers from apparent discrepancies and contradictions, the Appellate Court is justified in directing ossification test to arrive at a correct determination of age. The Juvenile Justice Board committed a legal error in declaring juvenility without resolving such inconsistency through permissible medical examination. [Paras 5, 9]

The Appellate Court's order remanding the matter to the Juvenile Justice Board with a direction to conduct ossification test was found to be in consonance with Section 94 of the Act of 2015 and supported by binding precedents of the Supreme Court. No illegality or perversity warranting interference under Section 102 of the Act of 2015 was made out. [Paras 8–10]

Criminal revision dismissed; order of the Appellate Court upheld. [Para 10] (E-14)

Case Law Cited

***Rajni v. State of U.P.,* 2025 SCC OnLine SC 1183 — relied on; *Rishipal Singh Solanki v. State of U.P.,* (2022) 8 SCC 602 — relied on*; P. Yuvaprakash v. State,* 2023 INSC 676 — relied on*; Vinod Katara v. State of U.P.,* (2023) 15 SCC 210 — relied on*; Sanjeev Kumar Gupta v. State of U.P.,* (2019) 12 SCC 370 — referred*; Kalim v. State of U.P.,* 2022 SCC OnLine All 2407 — followed.**

List of Acts / Statutes

Juvenile Justice (Care and Protection of Children) Act, 2015; Bharatiya Nyaya Sanhita, 2023**.**

List of Keywords

Juvenile Justice; Determination of age; Section 94 JJ Act; Conflicting school records; Birth certificate; Parivar register; Ossification test; Medical age determination; Revisional jurisdiction**.**

Case Arising From

Order dated 25.07.2025 passed by the Additional Sessions Judge / Special Judge (POCSO Act), Bahraich in Criminal Appeal No. 52 of 2025, arising out of order dated 27.05.2025 passed by the Juvenile Justice Board, Bahraich in Case No. 124/12/2024, Case Crime No. 626 of 2024, Police Station Motipur, District Bahraich.

Appearance for Parties

For the Revisionists: Sri Manoj Kumar Singh
For the Opposite parties nos. 2 and 3: Sri Rajesh Kumar Verma, Sri Gopalji Shukla
For the State: Sri Badrul Hasan, A.G.A

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

Vakalatnama filed by Shri Rajesh Kumar Verma, Advocate and Shri Gopalji Shukla, Advocate, on behalf of opposite party nos. 2 and 3, is taken on record.

(Order on Memo of Revision)

1. Heard Shri Manoj Kumar Singh, learned counsel for the revisionist; Shri Badrul Hasan, learned A.G.A. for the State, and above named counsel of opposite party nos. 2 and 3.

2. The present criminal revision, under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short "Act of 2015"), has been filed challenging the order dated 25.07.2025 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Bahraich (in short "Appellate Court"), in Criminal Appeal No. 52 of 2025 (Rajneesh Kumar and Another Vs. State of U.P. and Others).

3. Vide order dated 25.07.2025, the Appellate Court interfered in the order date 27.05.2025 passed by the Juvenile Justice Board, Bahraich (in short "JJB") in Case No. 124/12/2024 (State Vs. Aslam), arising out of Case Crime No. 626 of 2024, under Sections 109, 352, 351(3), 3(5) of BNS, Police Station- Motipur, District- Bahraich.

4. Vide order dated 27.05.2025, the JJB, based upon the date of birth indicated in the birth certificate i.e. 02.08.2010, held that on the date of incident, i.e. 12.12.2024 the accused-juvenile was aged about 14 years, 4 months, and 10 days. The relevant portion of the order dated 27.05.2025 reads as under:

पत्रावली के अवलोकन से यह विदित होता है कि अपचारी असलम कक्षा

01 से इतक प्राथमिक विद्यालय गोबिया में पड़ा जिसमें जनमतिथि 03-07-2006 अंकित है। सी०डब्लू ०3 में प्रधानाध्यापक ने असलम पुत्र साबिर मेरे विद्यालय में नहीं पढ़ा है। सी०डब्लू ०2 तदोपरान्त कक्षा 09 से नवयुग इण्टर कालेज में शिक्षा ग्रहण की है जहाँ अपचारी की जन्मतिथि 02-08-2010 अकित है अपचारी का दाखिला उपरोक्त विद्यालय में कक्षा 08 गायत्री बाल विद्या मन्दिर गिलौला श्रावस्ती द्वारा जारी टी सी के आधार पर किया गया है। जिसमें जन्मतिथि 02-08-2010 अंकित है। चूंकि अपचारी की जन्मतिथि प्राथमिक विद्यालय सी०डब्लू०3 में असलम पुत्र साबिर मेरे विद्यालय में पढ़ा नहीं फर्जी है तथा हाईस्कूल में भिन्न है। ऐसी परिस्थिति में प्रस्तुत प्रकरण के तथ्यों के परिपेक्ष में दाखिल जन्म प्रमाणपत्र को साबित करने हेतु सी०डब्लू० का बयान अंकित किया गया जिसमें ग्राम पंचायत अधिकारी ग्राम पंचायत्त गोपिया द्वितीय विकास खण्ड को परीक्षित कराया गया है उन्होंने अपने बयान में कथन किया है कि असलम की जन्मतिथि 02-08-2010 अंकित है।

पत्रावली में बादी को नोटिस भेजी गयी। बादी मुकदमा का तामीला प्राप्त हुआ वादी मुकदमा उपस्थित हुये। ऐसी स्थिति में किशोर न्याय (बालको की देख-रेख व संरक्षण) अधिनियम 2015 की धारा 94 आयु के निर्धारण में अपनायी जाने वाली प्रकियाओं के संबंध में प्राविधान उपबन्धित करती है। जिसमें धारा (94) की उपधारा (2) में यह प्राविधान किया गया है।

(2) यादि समिति या बोर्ड के पास इस संबंध में संदेह होने के युक्तियुक्त आधार है कि क्या उसके समक्ष लाया गया व्यक्ति बालक है या नहीं, तो यथास्थिति, समिति या बोर्ड, निम्नलिखित साक्ष्य अभिप्राप्त करके आयु अवधारण की प्रक्रिया का जिम्मा लेगा-

(1) विद्यालय से प्राप्त जन्म तारीख प्रमाण-पत्र या संबंधित परीक्षा बोर्ड से मैट्रिकुलेशन या समतुल्य प्रमाण-पत्र यदि उपलब्ध हो और उसके अभाव में,

(ii) निगम या नगरपालिका प्राधिकारी या पंचायत द्वारा दिया गया जन्म प्रमाणपत्र,

(i) उपरोक्त (i) और (ii) के अभाव में, आयु का अवधारण समिति या बोर्ड के अवधारण जाँच के आधार पर किया आदेश पर की गई अस्थि जॉच या कोई अन्य नवीनतम चिकित्सीय आयु जाएगाः-

अभिलेख / जन्म प्रमाणपत्र में जन्मतिथि 02-08-2010 दर्ज है जिसको साक्षी सी०डब्लू 104 द्वारा मूल अभिलेख से प्रमाणित करके दाखिल किया गया है। पत्रावली में दाखिल चालान पर घटना की तिथि 12-12-2024 को उसकी उम्र 14 वर्ष 04 माह 10 दिन पायी जाती है जिसके आधार पर बालक असलम को किशोर न्याय अधिनियम में परिभाषित विधि का

उल्लंघन करने वाला बालक की परिधि में आता है अतः बालक असलम को घटना की तिथि 12-12-2024 को विधि का उल्लंघन करने वाला बालक अवयस्क / किशोर घोषित किये जाने योग्य है।

आदेश

मुकदमा अपराध संख्या 626/2024 अन्तर्गत धारा-109,352,351 (3) 3 (5) बी. एन. एस थाना-मोतीपुर जनपद बहराइच के मामले के घटना की तिथि 12-12-2024 को बालक असलम की उम्र 14 वर्ष 04 माह 10 दिन अवधारित करते हुए बालक किशोर घोषित किया जाता है। तदानुसार आवेदक का प्रार्थना पत्र निस्तारित किया जाता है।"

5. Being aggrieved, the informant filed the appeal, registered as Appeal No. 52 of 2025 (Supra). This appeal has been decided vide impugned order dated 25.07.2025. By this order, the Appellate Court interfered in the order dated 27.05.2025 passed by JJB and remanded the matter back to JJB directing to hold the ossification test of the accused-juvenile for coming to the conclusion regarding the age of the accused-juvenile at the time of incidence. The relevant portion of the order of the appellate Court dated 25.07.2025 reads as under:

"10- इस प्रकार अवर न्यायालय की पत्रावली पर उपलब्ध साक्ष्य के विश्लेषण एवं उपरोक्त विधिक प्राविधान के परिप्रेक्ष्य में विद्वान किशोर न्याय परिषद बहराइच द्वारा अभियुक्त असलम के प्रथम विद्यालय में कक्षा-/ में प्रवेश से सम्बन्धित शैक्षणिक अभिलेखों में अंकित जन्मतिथि 03.07.2006 एवं हाईस्कूल के अंकपत्र/प्रमाण पत्र व अन्य अभिलेखों में अंकित जन्मतिथि 02.08.2010 में भिन्नता होने तथा जन्म प्रमाण-पत्र में भी हाईस्कूल अंकपत्र में अंकित जन्मतिथि को दर्शित करके दिनांक 09.04.2025 को निर्गत किये जाने के दृष्टिगत अभियुक्त के ऑसिफिकेशन टेस्ट के आधार पर अभियुक्त के आयु का निर्धारण किया जाना चाहिए था, ऐसा न करके विद्वान किशोर न्याय परिषद बहराइच द्वारा विधिक त्रुटि कारित की गयी है, इसलिए विद्वान किशोर न्याय परिषद बहराइच द्वारा पारित आलोच्य आदेश दिनांकित 27.05.2025 स्थिर रहने योग्य नहीं है। तदनुसार दाण्डिक अपील स्वीकार करते हुये आलोच्य आदेश दिनांकित 27.05.2025 अपास्त किये जाने योग्य पाया जाता है।

आदेश

अपीलार्थीगण की ओर से प्रस्तुत उपरोक्त दाण्डिक अपील स्वीकार की जाती है। प्रकीर्ण वाद सं०- 124/12/2024. अन्तर्गत धारा 109, 352, 351(3), 3(5) बी०एन०एस०, थाना मोतीपुर, जनपद बहराइच के मामले में विद्वान किशोर न्याय परिषद बहराइच द्वारा पारित आदेश दिनांकित 27.05.2025

अपास्त किया जाता है तथा विद्वान किशोर न्याय परिषद बहराइच को निर्देशित किया जाता है कि वह अभियुक्त के आयु का निर्धारण अभियुक्ता का ऑसिफिकेशन टेस्ट कराते हुये दोनों पक्षों को सुनने के पश्चात् गुण-दोष के आधार पर किया जाना सुनिश्चित करें। पक्षकार दिनाँक 31.07.2025 को किशोर न्यायालय के समक्ष सुनवाई हेतु उपस्थित हों।

इस आदेश की एक प्रति के साथ विद्वान किशोर न्याय परिषद बहराइच की सम्पूर्ण पत्रावली नियमानुसार किशोर न्याय परिषद बहराइच को अविलम्ब वापस की जाये।"

6. In the aforesaid background of the case, the instant revision has been filed.

7. For coming to the conclusion as to whether interference is required in the order dated 25.07.2025 passed by the Appellate Court, this court considered the following facts, as brought to the notice of this court by learned counsel for the parties from the record.

(i) With regard to an incident occurred on 12.12.2024, an FIR was lodged on the same day i.e. on 12.12.2024 at Police Station- Motipur, District - Bahraich.

(ii) The FIR was registered as Case Crime No. 626 of 2024 and taking note of the allegations therein the same was lodged under Section - 109, 352, 351(3) BNS.

(iii) After investigation, charge sheet has been filed against the accused-juvenile under Sections 109, 352, 351(3), 3(5) of BNS.

(iv) To avoid the rigors of provisions of the Act of 2015, according to which if an offence is committed by a minor aged between 16 to 18 years then in that eventuality he can be tried as an adult, an application was moved for determination of age of accused-juvenile.

(v) The application aforesaid was based upon the date of birth i.e. 02.08.2010 indicated in the mark sheet of the accused-juvenile of High School Examination of 2024 and Parivar Register.

(vi) To establish/proof the date of birth of accused-juvenile i.e. 02.08.2010, the father of the accused-juvenile, aged about 44 years, appeared before the JJB and his statement was recorded. According to the statement of father of the accused-juvenile before the JJB, the accused-juvenile studied at Government Primary School, Gopiya, from Class I to V.

(vii) Considering the statement of the father of the accused-juvenile, the Principal of Government Primary School, Gopiya, along with record, was summoned by the JJB.

(viii) Before the JJB, the Principal produced the school register, according to which the accused-juvenile was born on 03.07.2006. Relevant portion of the order of the JJB in this regard reads as under:

शैक्षाणिक प्रपत्रों व उसमे अंकित आयु को साबित करने के लिए प्रधानाध्यापक प्राथमिक विद्यालय गोपिया द्वितीय को परीक्षित कराया गया। उक्त साक्षी. डब्लू ०3 ने सशपथ बयान किया है कि" बाल अपचारी असलम के मूल अभिलेख लेकर बोर्ड के समक्ष उपस्थित आया। मै अपने

साथ प्रवेश फार्म अपने साथ प्रवेश रजिस्टर व उपस्थित रजिस्टर में अपने साथ लेकर आया हूँ एस आर रजिस्टर दो जो क्रम स. 1857 से 2233 तक है छात्र असलम अहमद जो कि 1905 पर नाम अंकित है जिसमें, उसकी जन्मतिथि 03-07-2006 अंकित है छात्र में मेरे विद्यालय में कक्षा 01 में प्रवेश लिया था।"

8. This Court also considered the following judgments.

A. The judgment passed by Hon'ble Apex Court in the case of **Rajni v. State of U.P., 2025 SCC OnLine SC 1183.** Relevant portion of which reads as under :-

25. Section 94 deals with presumption and determination of age. Section 94 reads thus:

***94. Presumption and determination of age**.-(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.*

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

25.1. Thus the process of age determination is provided in sub-section (2) of Section 94 which is identical to the procedure prescribed under sub-rule (3) of Rule 12 of the JJ Rules, 2007. Sub-section (2) of Section 94 says that to undertake the process of age determination, the child welfare committee or the JJB shall seek evidence in the following manner:

(i) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned Board, if available;

(ii) in the absence thereof, the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) in the absence of (i) and (ii), the age shall be determined by an ossification test or by any other latest

medical age determination test conducted on the orders of the child welfare committee or the JJB.

26. Having noticed the relevant legal framework, let us examine as to how the case of respondent No. 2 vis-a-vis juvenility was dealt with by the JJB and thereafter by the learned Additional District and Sessions Judge. As already noted above, JJB had held respondent No. 2 to be not a juvenile which decision was reversed by the learned Additional District and Sessions Judge and affirmed by the High Court.

27. At this stage, we need to mention that the date of the incident is 17.02.2021. On behalf of respondent No. 2, certificate from the DPS Higher Secondary School, Parvesh Vihar, Meerut was filed. Date of admission was mentioned as 04.04.2016. Date of birth of respondent No. 2 was mentioned as 08.09.2003. Respondent No. 2 had passed the high school examination in the year 2018 from the said DPS Higher Secondary School, Parvesh Vihar, Meerut. Thereafter, he was studying in CRK Inter College, Meerut. Therefore, on the date of the incident, respondent No. 2 was below 18 years of age. In the register of DPS Higher Secondary School and marksheet of high school examination, the date of birth of respondent No. 2 was mentioned as 08.09.2003. JJB in an earlier proceeding relating to respondent No. 2 i.e. Miscellaneous Case No. 9/2000 in respect of Crime Case No. 11/2000 under Section 307 IPC, Police Station Medical College, Meerut had accepted the date of birth of respondent No. 2 as 08.09.2003. It is seen that in the present proceeding JJB examined mother of respondent No. 2 who had filed the application to declare her son, respondent No. 2, as juvenile. JJB observed that she did not remember in which school respondent No. 2 had studied from Class 1 to Class 7 before taking admission in DPS Higher Secondary School in Class 8. In her statement, Principal of DPS Higher Secondary School, Smt. Manju Mala Sharma stated that she was working in the same school since the year 1996 and asserted that respondent No. 2 had obtained his education from her school from Class 4 to High School but original record of Class 4 to Class 8 were not available as those were destroyed due to fire.

27.1. JJB also rejected the birth certificate of Meerut Municipal Corporation which showed the date of birth of respondent No. 2 as 08.09.2003 on the ground that it was issued on 08.06.2020.

27.2. As regards the earlier decision of JJB, it was observed that the present informant was not a party therein. Therefore, she had no opportunity to tender evidence or to rebut the claim of juvenility of respondent No. 2. Thus the previous decision of JJB was not applicable.

27.3. It was in that context, JJB passed an order for medical examination of respondent No. 2. In compliance to such order, the Medical Board submitted report on 27.07.2021 assessing the age of respondent No. 2 as about 21 years.

27.4. JJB accepted the medical report dated 27.07.2021 wherein age of respondent No. 2 was assessed as about 21 years. On that basis, respondent No. 2 was found to be more than 18 years of age on the date of the incident. Thus respondent No. 2 was held to be an adult as on 17.02.2021 i.e. the date of the incident.

28. Admittedly, the line of reasoning adopted by the JJB is totally fallacious. When the concerned birth certificate from the school was available as well as birth certificate issued by the Meerut Municipal Corporation, JJB could

not have opted for ossification test. The statute is very clear that only in the absence of the certificates under clause (i) and clause (ii) of subsection (2) of Section 94 can the JJB order for an ossification test or any other medical test to determine the age of the juvenile. The certificate of the Meerut Municipal Corporation was issued on 08.06.2020 before the date of the incident. In any event, it was not open to the JJB to go behind the available school certificate or the birth certificate of the Corporation and record evidence to examine the correctness or otherwise of such certificate. This is not the mandate of Section 94(2) of the JJ Act, 2015. Therefore, the learned Additional District and Sessions Judge was justified in reversing such decision of the JJB. Learned Additional District and Sessions Judge gave preference to the date of birth of respondent No. 2 mentioned in the high school certificate wherein his date of birth was mentioned as 08.09.2003. Thus, respondent No. 2 was 17 years 3 months 10 days on the date of the incident. Accordingly, he was declared as a juvenile delinquent.

29. But there is a more fundamental issue here. In an earlier proceeding being Miscellaneous Case No. 9/2000 arising out of Crime Case No. 11/2000 registered under Section 307 IPC in the Medical College Police Station, Meerut, JJB had accepted the date of birth of respondent No. 2 as 08.09.2003. It is not open to the JJB to say in subsequent proceeding that date of birth of respondent No. 2 is not 08.09.2003 and thereafter proceed to have the opinion of the medical board. If this is permitted, it will amount to reviewing its earlier order. The JJ Act, 2015 confers no such power of review upon the JJB. It is trite law that power of review is either statutorily conferred or by necessary implication. No such power of JJB is traceable under the JJ Act, 2015.

30. High Court accepted the high school certificate of respondent No. 2 and held that there is no scope to interfere with the order of the learned Additional District and Sessions Judge.

31. In Rishipal Singh Solanki v. State of U.P.,(2022) 8 SCC 602, this Court after considering a catena of previous decisions of this Court held as follows:

*33. * * * * * **

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ

Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic

as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

32. A two-Judge Bench of this Court in P. Yuvaprakash v. State, 2023 INSC 676 held thus:

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

B. The judgment passed by Hon'ble Apex Court in the case of **Vinod Katara v. State of U.P., (2023) 15 SCC 210 : 2022 SCC OnLine SC 1204.** Relevant portion of which reads as under :-

"51. What is discernible from the dictum laid down in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594 : AIR 2013 SC 553] is that, in deciding whether an accused is juvenile or not, a hypertechnical approach should not be adopted. While appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. The inquiry contemplated is not a roving inquiry. The court can accept as evidence something more than an affidavit i.e. documents, certificates, etc. as evidence in proof of age. A mere opinion by a person as to the accused looking one or two years older than the age claimed by him (as the opinion of the head master in the present case) or the fact that the accused told his age to be more than what he alleges in the case while being arrested by the police officer would not hold much water. It is the documentary evidence placed on record that plays a major role in determining the age of a juvenile in conflict of law. And, it is only in the cases where

the documents or certificates placed on record by the accused in support of his claim of juvenility are found to be fabricated or manipulated, that the court, the Juvenile Justice Board or the Committee need to go for medical test for age determination."

C. The judgment passed by Hon'ble Apex Court in the case of **Sanjeev Kumar Gupta v. State of U.P., (2019) 12 SCC 370 : (2019) 4 SCC (Cri) 379 : 2019 SCC OnLine SC 926 at page 380**

"16. Both these judgments have since been considered by a two-Judge Bench of this Court in Parag Bhati [Parag Bhati v. State of U.P., (2016) 12 SCC 744 : (2017) 3 SCC (Cri) 819] , where it was observed : (SCC p. 758, para 36)

"36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case."

19. Now it is in this background that it becomes necessary for the Court to determine whether the High Court, in the exercise of its revisional jurisdiction, was justified in reversing the view of the learned Sessions Judge that the second respondent was not a juvenile on the date of the incident. In seeking to place reliance on the date of birth (17-12-1998) recorded in the CBSE matriculation certificate, the learned counsel appearing on behalf of the second respondent has submitted that under the provisions of Rule 12(3)(a) the said certificate has precedence over any other evidentiary document. In the course of the hearing of the appeal, we directed the CBSE to produce its records and to file an affidavit indicating the basis on which the date of birth was recorded in the matriculation certificate. The affidavit filed by the CBSE indicates that the date of birth in the records maintained by the CBSE was recorded purely on the basis of the final list of students forwarded by Maa Anjani Senior Secondary School, Etah Road, Shikohabad.

21. CBSE has stated before this Court that the date recorded in the matriculation certificate was purely on the basis of the final list of students forwarded by the Headmistress of Maa Anjani Senior Secondary School, Shikohabad. The Headmistress of Maa Anjani Senior Secondary School, Shikohabad deposed during the enquiry before the JJB, Firozabad. In the course of her examination, Headmistress Dipti Solanki stated:

"... We note down the date of birth of the student at the time of admission as per the information given by the parents and at the same time we obtain an affidavit but we could not procure an affidavit from this student. I have committed a mistake by not procuring an affidavit from this student. The date of birth was entered on the basis of the information given by the parent/father."

The Headmistress further stated:

" The father did not produce any record at the time of admission in respect of the date of birth of the student. They

would have been asked to produce the record of Class 4 at the time of admission but they did not. I cannot tell the reason thereof. The students are admitted without any document up to Class 5."

The above deposition indicates that the second respondent was admitted to Maa Anjani Senior Secondary School, Shikohabad in the fifth standard and was a student of the school until he completed his matriculation. The second respondent attended Saket Vidya Sthali, Jedajhal, Firozabad until the fourth standard. The school register and transfer certificate form of that school specifically contain an entry in regard to the date of birth of the second respondent as 17-12-1995.

22. Mr Ravindra Singh, learned Senior Counsel appearing on behalf of the second respondent has urged that the discrepancies which have been brought out in the course of the cross-examination of the former Manager of the school would indicate that there is a doubt in regard to the authenticity of that certificate. However, in our view, what must weigh against the second respondent's submission is that the date of birth which has been recorded in the certificate of Saket Vidya Sthali completely matches the date of birth which was voluntarily disclosed by the second respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the originals of which were seized during the course of the investigation and have been produced before this Court, the date of birth is reflected as 17-12-1995. The driving licence and the Aadhaar card are not standalone documents. The submission of the learned Senior Counsel that the date of birth in those documents may have been furnished by the accused to obtain an undue advantage cannot simply be accepted since it tallies with the date of birth indicated in the school records of Saket Vidya Sthali School. It is evident from the above analysis that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Shikohabad was the sole basis of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary School where the second respondent was a student from Class V to Class X is without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. On the other hand, there is a clear and unimpeachable evidence in the form of the date of birth which has been recorded in the records of Saket Vidya Sthali School which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence. The High Court reversed the findings of the Sessions Judge purely on the basis of the matriculation certificate. For the reasons which we have indicated, the date of birth as reflected therein cannot be accepted as authentic or credible. Once we come to the conclusion, as we have, that the date of birth of the second respondent is 17-12-1995, he was not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18-8-2015."

D. The judgment passed by this Court at Allahabad in the case of **Kalim v. State of U.P., 2022 SCC OnLine All 2407**. Relevant portion of which reads as under :-

"15. Coming to the facts of this matter admittedly, the school leaving certificate, wherein the date of birth was shown as 10.08.2006, issued on 25.11.2020 by the Primary School, Bawan Kheri, Thana-Hasanpur, Amroha was produced, however, the authenticity and the acceptability of that

certificate was challenged by the respondent-informant by producing a copy of pariwar register showing date of birth of juvenile as of the year 1999 as well as a driving licence showing the same year of birth. Thereafter, in rebuttal another copy of pariwar register was produced on behalf of the juvenile showing his date of birth as 10.08.2006.

17. From the perusal of the impugned order, it appears that finding the school leaving certificate quite doubtful and finding that there was no underlying document to record his age at the time of admission in the concerned institution coupled with the facts that other documents like copy of pariwar register and driving licence showed different age of the juvenile, in my view, the Juvenile Justice Board and the learned Appellate Court below rightly embarked on an inquiry and radiological age was ordered to be conducted. The courts below cannot be faulted for depending upon the medical/radiological age of the juvenile and declaring him as an adult on the basis of the evidence available in the facts and circumstance of the case. Before this Court, copy of bail order passed in Bail Application No. 70/2022 dated 15.01.2022 passed by the Incharge, Sessions Judge, Amroha and copy of the order passed by this Court on 24.05.2022 in Criminal Misc. Bail Application No. 7301 of 2022 moved on behalf of the present revisionist, who claim himself to be a juvenile, has been brought on record. In the bail application moved before the Sessions Judge, the applicant-revisionist has shown his age as 19 years, which goes against his own claim.

18. In my view, there were enough of reasons to discard the documented age of the juvenile and to call for ossification test, the Board was perfectly justified in seeking evidence for determination of age and drawing its own conclusion based on the evidence available including evidence of radiological test. The Board as well as appellate court both have given a concurrent finding which is not liable to be disturbed by this Court while exercising revisional powers under Section 102 of the Juvenile Justice Act, 2015, therefore, I do not find any illegality or impropriety in the impugned order."

9. Upon due consideration of the aforesaid, this Court finds that impugned order dated 25.07.2025 directing for ossification test is justified and no interference in the matter is required. It is for the reason that there is discrepancy in the date of birth of the accused-juvenile and the same is apparent from the following facts.

(i) The statement, on oath, given by the father of the accused-juvenile indicates that accused-juvenile was admitted in the Government Primary School, Gopiya, and the School Register/Student Record of this school produced and proved by the Principal indicates that the accused-juvenile was born on 03.07.2006.

(ii) Subsequent documents i.e. Parivar register and mark-sheet of the accused indicate that the accused-juvenile was born on as 03.08.2010.

10. It is, accordingly, **dismissed**. The order of the Appellate Court is upheld. No order as to costs.

(2025) 9 ILRA 1255
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.09.2025

BEFORE

THE HON'BLE SAMEER JAIN, J.

Criminal Revision No. 5794 of 2023

Rachana Devi & Ors. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Manoj Kumar Patel

Counsel for the Opposite Parties:
Anand Pati Tiwari, G.A.

Issue for Consideration

Whether rejection of the revisionists' application for discharge under Section 227 Cr.P.C. in a prosecution under Section 306 IPC was legally sustainable, when the material collected during investigation disclosed only allegations of matrimonial discord and quarrels, without prima facie evidence of instigation, mens rea or abetment as contemplated under Sections 306 and 107 IPC.

Headnotes

Penal Code, 1860 — ss.306, 107 — Code of Criminal Procedure, 1973 — s.227 — Abetment of suicide — Discharge — Scope — Ingredients of offence — Instigation — Mens rea — Matrimonial discord — Casual remarks in quarrel — Proximity — No prima facie case — Discharge justified- Revision allowed. (E-14)

Held:

At the stage of consideration of discharge under Section 227 Cr.P.C., the Court is required to examine whether the material on record, if accepted at its face value, prima facie constitutes the alleged offence. Where the basic ingredients of the offence are absent, continuation of proceedings amounts to abuse of process. [Paras 18–20]

For constituting an offence under Section 306 IPC, abetment as defined under Section 107 IPC is a mandatory ingredient. There must be instigation, intentional aid or conspiracy, coupled with a clear mens rea to abet the commission of suicide. Mere allegations of harassment or domestic discord do not satisfy the statutory requirement. [Paras 23–26]

From the statements recorded during investigation, only general allegations of quarrel, insult and matrimonial discord were disclosed against the revisionists. Even if the entire prosecution material is accepted as it is, it does not disclose that the revisionists instigated or intentionally aided the deceased to commit suicide. [Paras 29–31]

The alleged utterance during a quarrel that the deceased "should die", assuming it to be correct, was held to be a casual remark made in the heat of the moment, lacking the requisite mens rea and proximity to constitute abetment of suicide. [Paras 35–37]

To attract Section 306 IPC, the alleged conduct must be of such nature that it leaves the deceased with no option except to commit suicide. The material on record did not disclose such circumstances. [Paras 38–39]

The Sessions Court failed to properly analyse the legal ingredients of Sections 306 and 107 IPC and the evidentiary material on record. Rejection of the discharge application suffered from illegality. Impugned order set aside; revision allowed. [Paras 40–43]

Case Law Cited

Captain Manjit Singh Virdi v. Hussain Mohammed Shattaf, (2023) 7 SCC 633 — *relied on;* ***Laxmi Das v. State of West Bengal and others****, 2025 SCC OnLine SC 120 — relied on;* ***Ramesh Kumar v. State of Chhattisgarh****, (2001) 9 SCC 618 — relied on;* ***Swamy Prahaladdas v. State of M.P.****, 1995 Supp (3) SCC 438 — followed;* ***Kamaruddin Dastagir Sanadi v. State of Karnataka****, 2024 SCC OnLine SC 3541 — relied on;* ***Amalendu Pal @ Jhantu v. State of West Bengal****, (2010) 1 SCC 707 — referred to.*

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860.

List of Keywords

Abetment of suicide; Discharge; Instigation; Mens rea; Matrimonial discord; Domestic quarrel; Words spoken in heat of moment; No prima facie case**.**

Case Arising From

Order dated **19.10.2023** passed by the Sessions Judge, Auraiya in **Sessions Trial No. 828 of 2023** (State v. Rachana Devi and others), arising out of **Case Crime No. 683 of 2022**, Police Station Dibiyapur, District Auraiya.

Appearance for Parties
For the Appellants: Sri Manoj Kumar Patel
For the Respondent: Sri Kunwar Tejendra Bahadur, A.G.A.
For the Opposite Party No. 2: Sri Anand Pati Tiwari

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

1. Supplementary affidavit filed by revisionists is taken on record.

2. Heard Sri Manoj Kumar Patel, learned counsel for the revisionists, Sri Anand Pati Tiwari, learned counsel for O.P. No.2 and Sri Kunwar Tejendra Bahadur, learned AGA for the State.

3. By way of instant revision following prayer has been made:-

" It is therefore, most respectfully prayed that this Hon'ble Court may very kindly be pleased to set-aside the impugned judgment and order dated 19.10.2023 passed by Sessions Judge Auraiya rejecting the discharge application under section 227 Cr.P.C. in Sessions Trial No. 828 of 2023 (State Vs. Rachana Devi and others) arising out of case crime no. 683 of 2022 under section 306 I.P.C. Police Station-Dibiyapur District-Auraiya., so that justice may done otherwise the revisionist shall suffer irreparably. It is further prayed that his Hon'ble Court may kindly be pleased to stay the entire criminal proceeding initiated against the revisionists in Sessions Trial No. 828 of 2023 (State Vs. Rachana Devi and others) arising out of case crime no. 683 of 2022 under section 306 I.P.C. Police Station-Dibiyapur District-Auraiya, pending before District and Session Judge Auraiya, during the pendency of the present Revision, otherwise the revisionists shall suffer an Irreparable loss and injury."

Factual matrix of the case

4. FIR of the present case was lodged on 14.11.2022 against revisionists and one another under Section 306 IPC and according to FIR, marriage of the son of O.P. No. 2 was solemnized with revisionist no.1 about 7 years before and after marriage revisionists used to insult his son. It is further mentioned in the FIR that revisionist no.1 lodged a false case against O.P. No.2 and others under Sections 498-A, 323, 504, 506 IPC and 3/4 D.P. Act and thereafter she had left her matrimonial home and started leaving with revisionist nos. 2 and 3 but subsequently both the parties settled the dispute, however, revisionist no.1 did not drop the case.

5. It is further mentioned in the FIR, on 20.06.2022 revisionist no.1 turned out O.P. No.2 and his wife from her matrimonial home but subsequently she permitted them to live in her matrimonial home. As per FIR, on 08.11.2022, revisionist no.1 called revisionist nos. 2 and 3 and her brother in her matrimonial home and badly insulted O.P. No.2 and thereafter O.P. No.2 and his wife again left the house and on 12.11.2022, O.P. No.2 received information that revisionist no.1 is making quarrel with his son and on 13.11.2022, he received information about the death of his son. According to FIR, son of O.P. No.2 committed suicide due to the abetment of revisionists.

6. After registration of the FIR, investigation was conducted and after investigation charge-sheet has been filed against revisionists and after submission of charge sheet, court concerned took the cognizance and thereafter case was committed to the court of sessions. Before trial court, revisionists filed discharge

application but their discharge application has been dismissed vide impugned order dated 19.10.2023. Hence, instant revision.

Submission advanced on behalf of revisionists

7. Learned counsel for the revisionists submitted that revisionist no.1 is the wife of the deceased while revisionist nos. 2 and 3 are his mother-in-law and father-in-law respectively. He further submitted that as per allegation, due to abetment of the revisionists, son of O.P. No.2 i.e. husband of revisionist no.1 committed suicide by hanging himself but allegation of abetment levelled against them is totally false.

8. He further submitted that actually O.P. No.2 and his family members including the deceased used to torture the revisionist no.1 and due to this reason, she had to lodge a case against them under Sections 498-A, 323, 504, 506 IPC and 3/4 D.P. Act and however, on the request of O.P. No.2 and his son, revisionist no.1 started living in her matrimonial home but they again started torturing her and due to this reason sometimes dispute arose between husband and wife. He further submitted that due to bad behaviour of O.P. No.2 and his family members including deceased, revisionist nos. 2 and 3 being parents of revisionist no.1 raised objection but they never insulted the son of O.P. No.2 and due to matrimonial dispute deceased committed suicide by handing himself and it cannot be reflected, due to the abetment of revisionists, he committed suicide.

9. He further submitted that there is no evidence on record, which can suggest that due to abetment of the revisionists, deceased committed suicide and bald allegation of torture and insult made against the revisionists does not constitute offence of Section 306 IPC but court concerned failed to consider this fact and wrongly dismissed the discharge application filed by the revisionists.

10. He further submitted that during investigation I.O. also recorded the statements of independent witnesses, who were neighbours and however, from their statements recorded under Section 161 Cr.P.C., it reflects, some dispute very often arose between husband and wife i.e. revisionist no.1 and deceased but merely on the basis of such routine matrimonial dispute, it cannot be said that revisionist no.1 abated the deceased to commit suicide.

11. He further submitted that from the statements of independent witnesses, it also reflects on 8.11.2022 revisionists nos. 2 and 3 came at the matrimonial home of revisionist no.1 and serious alteration took place between them and deceased and thereafter they said that "why he not die" but even considering this fact, it cannot be said that due to abetment of revisionist nos. 2 and 3, deceased committed suicide.

12. He further submitted that during investigation I.O. failed to collect any cogent and admissible evidence, which can suggest that due to abetment of revisionists deceased committed suicide and, therefore, impugned order dated 19.10.2023 is illegal.

13. He further submitted that therefore, impugned order is illegal and after setting aside the impugned order dated 19.10.2023, revisionists may be discharged.

Submission advanced on behalf of State and O.P. No.2

14. Per contra, learned AGA as well as learned counsel for O.P. No.2 opposed the prayer and submitted that revisionist no.1 is the wife of deceased while revisionist nos. 2 and 3 are her parents and there are ample evidences, which can suggest that revisionists used to torture and insult the deceased and therefore, it cannot be said, there is no evidence of abetment against them.

15. They further submitted that even as per statements of witnesses recorded during investigation, it reflect, revisionist nos. 2 and 3 also insulted the deceased and on 08.11.2022, they also instigated him to die.

16. They further submitted that therefore, from the material available on record, it is apparent that prima facie offence under Section 306 IPC is made out against the revisionists and, therefore, by rejecting discharge application of revisionists, trial court did not commit any illegality and instant revision is devoid of merit and is liable to be dismissed.

Analysis and conclusion

17. By way of instant revision revisionists challenged the impugned order dated 19.10.2023 passed by the trial court, by which their discharge application has been dismissed.

18. Law with regard to discharge is settled, if material available on record prima face does not constitute the alleged offence then accused should be discharged and not otherwise.

19. The Apex Court in case of **Captain Manjit Singh Virdi vs. Hussain Mohammed Shattaf (2023) 7 SCC 633** in paragraph no. 11 has already observed as:-

"11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of charge sheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court."

20. Therefore, from the material available on record, it is to see, whether offence under Section 306 IPC is made out against the revisionists or not.

21. In case at hand, revisionist no.1 is the wife of the deceased while revisionist nos. 2 and 3 are his in-laws and according to the prosecution, due to their abetment deceased committed suicide and thus they committed offence punishable under Section 306 IPC.

22. Before delving into the matter, it is necessary to go through the Section 306 IPC, which reads as follows:-

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

23. From perusal of Section 306 IPC, it reflects, abetement to commit suicide is one of the essential ingredient to constitute offence under Section 306 IPC.

24. Abetement has been defined under Section 107 IPC, which reads as follows:-

"107. Abetment of a thing.-

A person abets the doing of a thing, who-

(First)- Instigates any person to do that thing; or

(Secondly)- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly)- Intentionally aids, by any act or illegal omission, the doing of that thing."

25. The Apex Court in case of **Laxmi Das vs. State of West Bengal and others 2025 SCC OnLine SC 120** in paragraph no. 8 held as:-

"8. When Section 306 IPC is read with Section 107 IPC, it is clear that there must be (i) direct or indirect instigation; (ii) in close proximity to the commission of suicide; along with (iii) clear mens rea to abet the commission of suicide."

26. Therefore, it is apparent that to constitute offence under Section 306 IPC instigation is one of the essential ingredients. Instigation means to provoke, incite or encourage a person to do an act.

27. The Apex Court in case of **Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618**, on which reliance was placed by Apex Court in case of **Laxmi Das(supra)** in paragraph no. 20 observed as:-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

28. Therefore, in the light of principle laid down by the Apex Court, it is to analyse, whether from the material placed before the trial court offence under Section 306 IPC is made out or not.

29. In case at hand, from the material available on record including the statements of witnesses recorded during investigation, it appears, there are general allegations of harassment and insult against the revisionists and as per statements of witnesses, it reflects, revisionist no.1 used to quarrel with the deceased but from their statements, it could not be reflected that revisionists in any manner instigated the deceased to commit suicide.

30. Mens rea to abet the commission of suicide is essential for offence punishable under Section 306 IPC. Mens

rea is the mental state, which shows the intention and, therefore, if wife or husband or their relatives are being either harassed or tortured but without any intention to commit suicide, then it cannot be said that there was abetment to commit suicide.

31. In the present case, however, as per prosecution, revisionists used to torture and insult O.P. No.2 but even if entire material collected by I.O. during investigation are accepted as it is then also it could not be reflected that revisionists were having mens rea to abet the deceased for suicide.

32. Further, however, from the record, it reflects, due to matrimonial dispute arose between revisionist no.1, the wife and deceased, the husband, wife i.e. revisionist no.1 lodged a case against him and his family members under Section 498-A, 323, 504, 506 IPC and 3/4 D.P. Act. but matrimonial discord and differences in domestic life are quite common and if due to this reason either husband or wife commits suicide then it cannot be held that due to their abetment deceased committed suicide.

33. The Apex Court in case of **Kamaruddin Dastagir Sanadi vs. State of Karnataka through SHO Kakati 2024 SCC OnLine SC 3541** also observed that discord and differences in domestic life are quite common in the society. Commission of suicide largely depends upon the mental status of the victim. Unless & until some guilty intention on the part of accused is apparent, it is ordinarily not possible to show accused committed offence punishable under Section 306 IPC.

34. As already observed, from perusal of the material available on record, it could not be reflected that revisionists were having mens rea or any intention that deceased committed suicide, therefore, prima facie, it reflects, allegations levelled against the revisionists are not sufficient to constitute offence under Section 306 IPC.

35. Further, however, from the statements of witnesses recorded during investigation, it reflects, on 8.11.2022, revisionists nos. 2 and 3, the in-laws of the deceased i.e. parents of revisionist no.1 came at the house of the deceased and during quarrel told him "he should die" and thereafter deceased committed suicide on 13.11.2022 but in view of this Court, it does not constitute offence punishable under Section 306 IPC as it cannot be said that due to their abetment deceased committed suicide.

36. In case of **Swamy Prahaladdas vs. State of M.P. and another 1995 Supp (3) SCC 438:1995 SCC (Cri) 943** the accused remarked to the deceased that go and die and thereafter deceased committed suicide, the Apex Court in paragraph no. 3 observed as:-

"3. ..... Those words are casual in nature which are often employed in the heat of moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite means rea on the assumption that these words would be carried out in all events."

37. Therefore, it is apparent that if any words uttered in heat of the moment during quarrel and thereafter deceased committed suicide then also it cannot be held that due to abetment of accused deceased committed suicide.

38. Further, to constitute offence under Section 306 IPC, it is necessary that the

alleged harassment was of such nature, which left no other option for the deceased except to commit suicide.[See: **Amalendu Pal alias Jhantu vs. State of West Bengal (2010) 1 SCC 707**].

39. In case at hand, however, as per prosecution, due to matrimonial dispute revisionists used to harass the deceased but from the entire evidence available on record, it could not be reflected that except to commit suicide, he was not having any other option, therefore, from this point of view also offence under Section 306 IPC is not made out.

40. Therefore, from the discussion made above, it reflects, no prima facie offence under Section 306 IPC is made out against the revisionists and court concerned without properly analyzing the evidence available on record dismissed the discharge application filed by revisionists and, therefore, committed illegality.

41. Therefore, considering the facts and circumstances of the case discussed above, in considered view of this Court while dismissing the discharge application of the revisionists trial court committed illegality and impugned order dated 19.10.2023 is illegal.

42. Accordingly, impugned order dated 19.10.2023 passed by the court concerned is hereby set aside.

43. The instant revision stands **allowed**.

(2025) 9 ILRA 1262
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.09.2025

BEFORE

THE HON'BLE SIDDHARTH, J.

Criminal Revision No. 6662 of 2024

Juvenile-X ...Revisionist
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Revisionist:
Ashwani Kumar Mishra

Counsel for the Opposite Parties:
G.A.

Issue for Consideration

Whether the Juvenile Justice Board and the Appellate Court erred in holding that the offences alleged against the revisionist under Sections 363, 366 IPC and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 constituted "heinous offences" under the Juvenile Justice (Care and Protection of Children) Act, 2015, thereby justifying trial of the juvenile as an adult under Section 15 of the Act, notwithstanding the law laid down by the Supreme Court in *Shilpa Mittal v. State (NCT of Delhi)*.

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 — ss.2(33), 14, 15, 19 — Penal Code, 1860 — ss.363, 366 — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — s.3(2)(v) — Juvenile in conflict with law — Heinous offence — Minimum sentence of seven years — "Fourth category" of offences — Serious offence — Trial as adult — Orders set aside.

Held:

Under the Juvenile Justice (Care and Protection of Children) Act, 2015, an offence can be categorised as a "heinous offence" only if it prescribes a minimum sentence of seven years or more. Offences which provide for a maximum sentence exceeding seven years but do not prescribe a minimum sentence, or prescribe a minimum sentence of less than seven years, fall in the "fourth category" identified by the Supreme Court in *Shilpa Mittal v. State (NCT of*

Delhi) and are required to be treated as "serious offences". [Paras 6–7]

A plain reading of Sections 363 and 366 IPC shows that neither provision prescribes any minimum sentence. Section 363 IPC provides punishment which may extend to seven years, while Section 366 IPC provides punishment which may extend to ten years. Consequently, offences under these provisions cannot be treated as heinous offences within the meaning of Section 2(33) of the Act of 2015. [Para 8]

Section 3(2)(v) of the SC/ST Act applies only where the offence is committed with the knowledge that the victim belongs to a Scheduled Caste or Scheduled Tribe and where the underlying offence is punishable with imprisonment of ten years or more. From the FIR and the statement of the victim, it was evident that the revisionist did not commit the alleged acts with knowledge of the victim's caste, and the victim herself admitted to a consensual relationship. In absence of the essential ingredients of Section 3(2)(v), the said provision was not attracted. [Para 9]

In view of the law laid down by the Supreme Court in *Shilpa Mittal* (supra), the offences alleged against the revisionist fell in the fourth category and were liable to be treated as serious offences, not heinous offences. Consequently, the Juvenile Justice Board was not justified in invoking Section 15 of the Act of 2015 and directing trial of the revisionist as an adult. [Paras 7, 9]

The impugned orders of the Juvenile Justice Board and the Appellate Court were set aside. The matter was remitted to the Juvenile Justice Board for conducting the trial of the revisionist as a juvenile accused of a serious offence, in accordance with Section 14(5)(e) of the Act of 2015. Criminal revision allowed. [Paras 10–12] (E-14)

Case Law Cited

Shilpa Mittal v. State (NCT of Delhi), AIR 2020 SC 405 — *relied on*.

List of Acts / Statutes

Juvenile Justice (Care and Protection of Children) Act, 2015; Indian Penal Code, 1860; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Protection of Children from Sexual Offences Act, 2012**.**

List of Keywords

Juvenile in conflict with law; Heinous offence; Serious offence; Minimum sentence; Fourth category of offences.

Case Arising From

Judgment and order dated 14.11.2024 passed by the Appellate Court / Additional Sessions Judge / Special Judge, POCSO Act, Jhansi in Criminal Appeal No. 31 of 2024, affirming the order dated 09.05.2023 passed by the Juvenile Justice Board, Jhansi in Case No. 675 of 2023, arising out of Case Crime No. 53 of 2020, Police Station Kotwali, District Jhansi.

Appearance for Parties

For the Appellants: Sri Ashwani Kumar Mishra
Sri Anurodh Tripathi (holding brief)
For the State: Learned A.G.A.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Anurodh Tripathi Advocate holding brief of Sri Ashwani Kumar Mishra, learned counsel for the revisionist; learned A.G.A. for the State and perused the trial court record

2. The present criminal revision has been filed challenging the impugned judgment and order dated 14.11.2024 passed by Juvenile Justice Board / Additional Sessions Judge / Special Judge, POCSO Act, Jhansi in Criminal Appeal No. 31 of 2024 (Juvenile X vs. State of U.P and Another) as well as order dated 09.05.2023 passed by Juvenile Justice Board, Jhansi in Case no. 675 of 2023 (State vs. Sagar Dheemar) under Sections- 363, 366 IPC and Section 3(2)5 of SC/ST Act and Section 11/12 POCSO Act, arising out of Case Crime No. 53 of 2020, Police Station- Kotwali, District- Jhansi whereby Juvenile Justice Board

allowed application of prosecution filed under Section 15 of Juvenile Justice Act, 2015.

3. The Juvenile Justice Board by the order dated 09.05.2023 held that revisionist, whose age was earlier determined on 18.08.2020 as 17 years, 11 months and 9 days has committed heinous offence and deserves tried as adult. The Board further recorded finding that the revisionist was mentally and physically capable of committing the alleged offence and was also able to understand the consequences of his act as well as the circumstances in which the offence was allegedly committed. Relying upon the questioning of the revisionist by the Board and the report submitted by the psychologist, the Board directed that the case of the revisionist be transmitted to the Children's Court for his trial as an adult. The aforesaid order dated 09.05.2023, passed by the Juvenile Justice Board, was challenged by the revisionist before the Children's Court by way of an appeal.

4. The Appellate Court, upon consideration, held that since the revisionist stands implicated under Sections 363 and 366 of the Indian Penal Code as well as Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the offences alleged against him fall within the category of heinous offences. Accordingly, forwarding of his case to the Children's Court by the Juvenile Justice Board for trial of the revisionist as an adult was found to be justified. Aggrieved by the aforesaid order, the present revision has been preferred before this Court.

5. Learned counsel for the revisionist has submitted that the following punishment has been provided for committing the offences under Sections- 363, 366 IPC and Section 3(2)(v) of SC/ST Act :-

363. Punishment for kidnapping.- Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

Section 3(2)(va) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

6. Reliance has been placed in the judgment of the Apex Court in the case of **Shilpa Mittal vs. State of NCT of Delhi reported in AIR 2020 SC 405.** In

paragraph 2 of the aforesaid judgment of the Apex Court has framed the relevant question as follows :-

"Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?" is the extremely important and interesting issue which arises in this case."

7. The aforesaid issue was considered by the Apex Court. The Apex Court has answered this question after discussions from paragraph nos. 30 to 36 which are as follows :-

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum' .

31. No doubt, as submitted by Mr. Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4 th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

32. We may add that the High Courts of Bombay 9, Patna10, and Punjab and Haryana11, have taken a view that the category of 'heinous offences' cannot include offences falling within the 4 th category. No contrary view has been brought to our notice. We see no reason to take a different view.

33. It was urged by Mr. Luthra that while defining 'heinous offences' the word 'includes' has been used which would mean that the definition is an inclusive definition and includes things not mentioned in the definition. We are not impressed with this argument since the definitions of 'petty offences' and 'serious

offences' also use the word 'includes'. In fact the word 'includes' is a surplusage. The word 'includes' in the three definition 9 Saurabh Jalinder Nangre & Ors. vs. State of Maharashtra, 2019 (1) Crimes 253 (Bom). 10 Criminal (SJ)No.1716 of 2018 titled Rajiv Kumar vs. State of Bihar. Judgment dated 18.09.2018 11 CRR 1615 of 2018 titled Bijender vs. State of Haryana and another, judgment dated 21 st May, 2018. clauses does not make any sense. There is nothing else to be included. The definition is complete in itself.

34. From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

35. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

36. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4 th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter."

8. A perusal of Section 363 IPC reveals that no minimum sentence has been prescribed for committing the offence contemplated therein. The provision stipulates that the punishment may extend to seven years along with fine. Similarly, under Section 366 IPC, the punishment may extend to ten years along with fine. Insofar as Section 3(2)(v) of the SC/ST Act is concerned, it applies only in cases where an offence under the IPC is punishable with imprisonment for a term of ten years or more and is committed against a person or property with the knowledge that such person is a member of a Scheduled Caste or a Scheduled Tribe. The said provision mandates punishment with imprisonment for life and fine.

9. In the present case, however, from a plain reading of the F.I.R. as well as the statement of the victim, it is evident that the

revisionist did not commit any act against the victim with the knowledge that she belonged to Scheduled Caste. On the contrary, the victim has admitted that she was in a consenting relationship with the revisionist. She has further not made any allegation that the alleged act was committed against her on account of her caste. She has admitted knowing the mobile number of revisionist and talking to him. Since under Sections-363 and 366 IPC, thereis no minimum sentence provides and care comes in the 4th category of cases defined in Shilpa Mittal (Supra). Hence, the revisionist cannot be said to have committed any heinous offence. At the most he committed a serious offence as per the dictum of Apex Court in the case of Shilpa Mittal (Supra) considered hereinabove. Therefore, the trial of the revisionist is required to be conducted as per Section 14(5)(e) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

10.The impugned orders are hereby set aside.

11.The criminal revision is accordingly, **allowed**.

12. The record of this case shall be sent to the Juvenile Justice Board, Jhansi where the revisionist shall be tried as an accused implicated for committing the serious offence.

13. The office is directed to return the lower court record to the court concerned forthwith along with copy of this order.

(2025) 9 ILRA 1267
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.09.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

RERA Appeal No. 72 of 2025
Connected With
RERA Appeal No. 18 of 2025
and other connected cases

Ratan Buildtech Private Limited ...Appellant

Versus

Anil Kumar ...Respondent

Counsel for the Appellant:
Prashant Kumar Singh, Sudeep Kumar

Counsel for the Respondent:

Issue for Consideration

(i) Whether the Real Estate Appellate Tribunal was justified in **granting delayed interest under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016**, without conducting a separate adjudicatory inquiry, and whether such grant of interest is **automatic and mechanical** upon admitted delay in handing over possession.

(ii) Whether the Appellate Tribunal was empowered, under **Section 44(6) read with Section 53(1) of the RERA Act**, to itself award interest after setting aside the order of the Adjudicating Officer.

(iii) Whether the amount deposited by the promoter as **pre-deposit under Section 43(5) of the RERA Act** could be **appropriated towards satisfaction of the interest awarded**, or whether it was merely a security for maintaining the appeal.

(iv) Whether an appeal under **Section 58 of the RERA Act** would lie before the High Court against an order of the Appellate Tribunal granting interest under Section 18(1), particularly where the facts relating to delay and possession were admitted.

Headnotes

Real Estate (Regulation and Development) Act, 2016 — ss.18(1)(a), 43(5), 44(6), 53, 58 — Delayed possession — Interest — Nature of liability — Statutory consequence — Powers of Appellate

Tribunal — Pre-deposit — Adjustment — Rule 15 U.P. RERA Rules — Drafting mistake — Direction to Draftsman — Appeal to High Court — Substantial question of law — What constitutes-All appeals dismissed.

Held:

Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 creates a statutory liability upon the promoter to pay interest for every month of delay till handing over possession where the allottee elects to continue with the project. Where the date of completion stipulated in the agreement and the actual date of offer of possession are admitted, entitlement to interest follows as a direct statutory consequence, leaving no adjudicatory discretion either with the Authority or the Tribunal. [Paras 26–30]

The Court authoritatively held that the words *"as the case may be"* occurring in Section 18(1)(a) do not introduce any element of discretion or conditionality, but merely refer to the two contingencies contemplated by the provision itself. The right to interest under Section 18(1)(a) is automatic, compensatory in nature, and distinct from compensation, which alone requires adjudication by the Adjudicating Officer. [Paras 27–29]

On the scope of appellate powers, it was held that the Real Estate Appellate Tribunal, while exercising jurisdiction under Section 44(6) read with Section 53, is competent to pass such orders as the authority below could have passed. Where entitlement to interest is determinable on admitted and undisputed facts, the Tribunal is legally empowered to grant interest itself instead of remanding the matter, and such exercise does not suffer from jurisdictional infirmity. [Paras 31–32]

With respect to Section 43(5), the Court held that the pre-deposit made by the promoter for entertainment of the appeal is not a mere procedural security, but partakes the character of payment towards adjudicated liability, subject to final outcome. Such deposit can therefore be adjusted towards satisfaction of interest liability, and refund arises only in the event of success or excess deposit. [Paras 33–38]

The Court examined in detail the scope of an appeal under Section 58 of the RERA Act, holding that such appeal is maintainable only on substantial questions of law, analogous to Section 100 C.P.C. It was categorically held that:
(i) questions relating to computation of interest on admitted delay,
(ii) exercise of statutory powers by the Tribunal on admitted facts, and
(iii) adjustment of statutory pre-deposit,
do not constitute substantial questions of law. Re-agitation of settled statutory consequences under the guise of a Section 58 appeal was held to be impermissible. [Paras 39–42]

The Court further noticed that Rule 15 of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016, as presently worded, appears to suggest mandatory adjudication by the Adjudicating Officer even in cases of statutory interest under Section 18. Treating this as a drafting mistake, and clarifying that it had no bearing on the decision of the appeals, the Court directed that the issue be placed before the Draftsman for rectification. [Para 35]

In absence of any substantial question of law, all appeals filed by the promoter as well as the allottee were dismissed. [Para 43] (E-14)

Case Law Cited

Newtech Promoters and Developers Pvt. Ltd. v. State of U.P., (2021) 18 SCC 1 — *relied on; Commissioner of Income Tax, Bombay v. Walchand & Co. (P) Ltd., 1967 SCC OnLine SC 119 — relied on; Commissioner of Income Tax, Madras v. S. Chenniappa Mudaliar, (1969) 1 SCC 591 — relied on; Subramaniam Shanmugham v. M.L. Rajendran, (1987) 4 SCC 215 — relied on; Mahindra & Mahindra Financial Services Ltd. v. State of U.P., 2019 SCC OnLine All 5336 — referred to; Harinagar Sugar Mills Ltd. v. State of Bihar, (2003) 11 SCC 40 — relied on; Axis Bank v. SBS Organics Pvt. Ltd., (2016) 12 SCC 18 — relied on; M/s Kut Energy Pvt. Ltd. v. Punjab National Bank, (2020) 19 SCC 533 — relied on.*

List of Acts / Statutes

Real Estate (Regulation and Development) Act, 2016; Uttar Pradesh Real Estate (Regulation and

Development) Rules, 2016; Code of Civil Procedure, 1908.

List of Keywords

RERA Act; Section 18 interest; Delay in possession; Statutory liability; Powers of Appellate Tribunal; Pre-deposit under Section 43(5); Adjustment of deposit; Rule 15 U.P. RERA Rules; Drafting error; Direction to Draftsman; Section 58 appeal.

Case Arising From

Common judgment dated 14.05.2025 passed by the Uttar Pradesh Real Estate Appellate Tribunal in Appeal No. 438 of 2023 and connected appeals, arising out of orders dated 10.02.2023 passed by the Adjudicating Officer, Uttar Pradesh Real Estate Regulatory Authority, Gautam Budh Nagar.

Appearance for Parties

For the Appellants: Sri Prashant Kumar Singh, Sri Sudeep Kumar, Ms. Twinkle Rajpal
For the Respondents: Sri Manish Singh, Sri Azhar Ikram, Sri Suryansh Narula, Ms. Anupama Bhadauria, Ms. Surabhi Rawat

(Delivered by Hon'ble Pankaj Bhatia, J.)

SUO-MOTO

1. It was pointed out by the office that on account of the inadvertence, the date of the judgment was wrongly transcribed as 'August 04, 2025'.

2. Noticing the said ex-facie error in recording of the date of judgment, same is corrected. The date of the judgment shall be shown and read as 'September 04, 2025' instead of 'August 04, 2025'.

September 9, 2025

1. Heard Sri Sudeep Kumar along with Mahima Pahwa and Sri Prashant Kumar Singh, learned Counsels appearing on behalf of the appellants and Sri Azhar Ikram along with Sri Manish Singh, learned Counsels appearing on behalf of the respondents-allottee. Sri Azhar Ikram also appears on behalf of the appellant-allottee in RERA Appeal No.70 of 2025.

2. The RERA Appeal Defective No.18; RERA Appeal Defective No.19 of 2025; RERA Appeal Defective No.20 of 2025 and RERA Appeal Defective No.25 of 2025 have been filed along with an application for condonation of delay. The cause shown are sufficient. The applications for condonation of delay are allowed. The delay in filing the appeals are condoned.

3. All the abovesaid appeals arise out of the same judgment passed by the U.P. Real Estate Appellate Tribunal, as such, are being decided by means of this common judgment.

4. For the brevity, the facts as emerge from the RERA Appeal No.72 of 2025 are that the respondent was allotted an apartment by the appellant at NOIDA under a builder buyer agreement on 22.01.2019. It is stated that on 16.09.2022, completion certificate was issued by the Greater Noida Industrial Development Authority in favour of the promoter. It is further stated that on 11.10.2022, the respondent filed a complaint for grant of interest and compensation under Form-N prescribed under The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act) before the Adjudicating Officer, Uttar Pradesh Real Estate Regulatory Authority at Gautam Budhnagar. In the said complaint, the allegations of incorrect and false information; delay in possession and failure to discharge duties as per the Act, Rules and Regulations were made. In the said complaint, it is also stated that the

possession was not provided as per the agreement and the allegation of mental harassment was also made and on these grounds, the respondent sought compensation of Rs.6,00,000/-. The said complaint/ application was resisted by the appellant by filing an objection and the objections were raised with regard to the jurisdiction to grant delay interest or compensation, which according to the appellant could be done only by the Regulatory Authority. After considering the complaint and objections filed, the compensation was awarded by the Adjudicating Authority vide order dated 10.02.2023. The said order of the Adjudicating Authority was challenged by the appellant in Appeal No.438 of 2023 before the Real Estate Appellant Tribunal (hereinafter referred to as the Tribunal) seeking quashing of the judgment dated 10.02.2023 on various grounds. It is stated that the requirement of pre-deposit under Section 43 of the RERA Act was also fulfilled at the time of filing of the appeal.

5. From the perusal of the appeal memo filed before the Tribunal, a copy whereof is on record as Annexure-5 to the RERA Appeal No.72 of 2025, what transpires is that while filing the appeal, one of the main grounds taken before the Tribunal was that the interest and compensation has been awarded by the Adjudicating Authority, whereas, the power to grant compensation for delay is vested only with the Regulatory Authority in terms of the judgment of the Hon'ble Supreme Court in the case of Newtech Promoters and Developers Pvt. Ltd. vs State of U.P. (Civil Appeal No.6745-6749 of 2021). In paragraph 3 of the appeal filed before the Tribunal, it was stated that the grant of compensation was not justified as the same was without jurisdiction and was liable to be dismissed. In paragraph 6, it was specifically stated that the allottee had only the remedy to claim interest till the handing over of the compensation and no relief with regard to the compensation could be granted. In paragraph 8, it was specifically stated that the only remedy available to the allottee was to claim interest for the period of delay till such time the possession was offered, which authority is solely vested with Regulatory Authority and not the Adjudicating Officer. In paragraphs 13 and 14, the grant of compensation was said to be bad in law and in paragraph 23, it has been stated that in the builder buyer agreement, the expected date of offer was December, 2019 but the same was subjected to delay including COVID-19. In paragraph 29, it was specifically pleaded that the term mentioned in the builder buyer agreement was not essence of the contract and only a tentative time of completion of the project along with extension clause was provided indicating that the offer of possession was subject to incidents of force majeure which may adversely affect the delivery of possession and there was no provision for grant of any penal consequences. In paragraph 31, it was admitted that the offer of possession was sent for the first time on 13.10.2022. In paragraph 33, the jurisdiction of the Adjudicating Authority was once again challenged. In paragraph 35, a ground has been taken that in the official website of the RERA, the completion period of the project is mentioned as 30.12.2020 and further extension of one year was granted from 31.12.2019 to 30.12.2020 and the every promoters has the right and privilege to get the extension of one year as a matter of right. A claim with regard to waiver of interest for the COVID period was also pleaded. It was admitted that an application

was also moved before the RERA Authority on 21.09.2021 for extension, however, no orders were passed thereupon. In short, the entire appeal was premised on the ground that no compensation or interest could have been awarded by the Adjudicating Authority.

6. The Tribunal after hearing the parties proceeded to decide the issues, vide order dated 14.05.2025, in between the parties including the question of jurisdiction as was raised by the appellant in exercise of powers vested in the Tribunal by virtue of Section 44(6) read with Section 53(1) of the RERA Act. Section 44(6) and Section 53(1) reads as under:

"44. Application for settlement of disputes and appeals to Appellate Tribunal.

...

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

***53. Powers of Tribunal**.-(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice."*

7. On the basis of the abovesaid powers, the Tribunal,on the basis of limited arguments raised as are reflected from order, decided the appeal vide order dated 14.05.2025 and set aside the order passed by the Adjudicating Authority however,it was decided that the respondent-allottee is entitled to delay interest only w.e.f. 01.01.2020 to 13.10.2022 at MCLR + 1% on the deposited amount except for the six months 'force majeure' period on account of Covid-19. It was further directed that the amount so deposited as pre-deposit under Section 43(5) of the RERA Act shall be released in favour of the respondent after verifying whether any execution proceedings is pending or not and in case any execution is pending, the amount so deposited shall be remitted to the Regulatory Authority. Aggrieved by the order dated 14.05.2025, the present RERA appeal being No.70 of 2025 has been preferred by the appellant.

8. One of the respondents-allottee preferred RERA Appeal No.70 of 2025 attacking the order by arguing that the compensation could not have been refused apart from interest.

9. It is admitted in between the parties that in terms of the builder buyer agreement executed in between the appellant and the respondent on 22.01.2019, the date of delivery of possession was indicated as December, 2019. It is also admitted that the completion certificate was received on 16.09.2022 and the letter for the allotment was issued by the appellant on 13.10.2022.

10. It is argued by the Counsel for the appellant that after issuance of the completion certificate by the competent authority, the appellant issued offer of possession to the allottee on 13.10.2022 but the respondent did not come forward for execution of the lease deed. Subsequently, the lease deed was executed on 15.02.2024 in between the promoter and the allottee. It is also argued that the manner in which the interest has been awarded by the Tribunal is bad in law and further the pre-deposit for preferring the appeal could not have been

directed to be released in favour of the respondent.

11. The Counsel for the appellant on the basis of the written agreement also argues that it is well settled that the Adjudicating Officer has no jurisdiction to grant interest as has been held by the Hon'ble Supreme Court in the case of **Newtech Promoters and Developers (P) Ltd. vs State of U.P.:(2021) 18 SCC 1**. Interest, according to the appellant can be granted only by the Regulatory Authority and not by the Adjudicating Authority. The Counsel for the appellant further argues that the order, which records that the appellant has admitted about the delay in delivery of the possession of the apartment, is erroneous, inasmuch as, the admission on the part of the appellant was only to the effect that the apartment could not be delivered to the allottee and not any admission that they are liable to pay interest and compensation. It is further argued that it was incumbent upon the Tribunal to have conducted an inquiry before directing for payment of interest as has been done by means of the impugned judgment. It is further argued that no reasons have been recorded while granting the interest and the Tribunal has erred in directing the refund of money, which was deposited as pre-deposit under Section 43, which is primarily for the purpose of satisfying the statutory requirement of maintaining an appeal and cannot be appropriated after the decision is made. Reliance is also placed upon the provisions of Section 44(6) of the RERA Act to argue that even if the Tribunal had the power, it was incumbent upon the Tribunal to hold full-fledged inquiry before granting interest which has not been done.

12. The Counsel for the appellant further argues that although the Tribunal is vested with the power to pass such order as thinks fit, however, the grant of interest is subject to fulfilling the procedure and after framing legal issues and after analyzing the evidence. It is further argued that although the provisions of Code of Civil Procedure, 1908 would not apply, however, once the Tribunal is of the view that the Adjudicating Officer had no jurisdiction, it was incumbent to frame issues itself and then decide the same. In support of the contention, the Counsel for the appellant argues that the Hon'ble Supreme Court while analyzing the phrase "to pass orders as it thinks fit" in the case of ***Commissioner of Income Tax, Bombay vs Walchand & Co. (P) Ltd.:1967 SCC OnLine SC 119*** held as under:

"... It is necessary to emphasize that though the Tribunal is not a court, it is invested with judicial power to be exercised in manner similar to the exercise of power of an appellate court acting under the Code of Civil Procedure. Authority to "pass such orders thereon as it thinks fit" in Section 33(4) of the Income Tax Act, 1922, is not arbitrary : the expression is intended to define the jurisdiction of the Tribunal to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the case. In the hierarchy of authorities the Appellate Tribunal is the final fact-finding body; its decisions on questions of fact are not liable to be questioned before the High Court. The nature of the jurisdiction predicates that the Tribunal will approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record its reasons in support of the decision. The practice of recording a

decision without reasons in support cannot but be severely deprecated."

13. Similarly in the case of **Commissioner of Income Tax, Madras vs S. Chenniappa Mudaliar, Madurai: (1969) 1 SCC 591** held as under:

"... The powers, functions and duties of the Appellate Tribunal are set out in Sections 28, 33, 35, 37, 48 and 66. For our purpose reference may be made only to Sections 33 and 66. Sub-sections (1) and (2) of Section 33 give a right to the assessee and the Commissioner to appeal to the Appellate Tribunal against the order passed by the Appellate Assistant Commissioner within sixty days of the communication of his order. Under sub-section (2-A) the Tribunal can admit an appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not presenting it within that period. Sub-section (3) lays down the formalities in the matter of the filing of an appeal. Sub-section (4) is to the effect that the Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit and shall communicate any such orders to the assessee and to the Commissioner. Sub-section (5) deals with the changes to be made in the assessment as a result of the orders of the Appellate Tribunal. Sub-section (6) makes the orders of the Tribunal on appeal final, the only saving being with reference to the provisions of Section 66. Under that section the assessee or the Commissioner can require the Appellate Tribunal to refer to the High Court any question of law arising out of the order of the Appellate Tribunal and if the Tribunal refuses to state the case on the ground that no question of law arises the assessee or the Commissioner can, within the prescribed period, apply to the High Court and the High Court can direct the Appellate Tribunal to state the case and make a reference. It is unnecessary to refer to all the provisions of Section 66 except to notice the power of the High Court to decide the question of law which decision has to be implemented by the Appellate Tribunal.

7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. CIT, [(1967) 63 ITR 232 : 1966 SCC OnLine SC 171] the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). ...

14. It is further argued that as far as the grant of interest is concerned, Section 18 of RERA Act read with Rule 33 of The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (hereinafter referred to as "RERA Rules") are relevant. The said Section and Rule are quoted in subsequent paragraph.

15. The Counsel for the appellant further argues that the phrase "as the case may be" used in Section 18 (1)(a) should be interpreted to hold that grant of interest is not a mechanical exercise rather it is dependent on various factors as prescribed under Section 72, which mandates for inquiry to be conducted by the Regulatory Authority and in absence of such exercise, the impugned order passed by the Tribunal granting interest for delayed period is wholly impermissible. The phrase "as the case may be" come up for consideration before Hon'ble Supreme Court in the case of **Subramaniam Shanmugham vs M.L. Rajendran: (1987) 4 SCC 215**. In para 3 of the said judgment, Hon'ble Supreme Court held as under:

"3. Justice Morris in Bluston & Bramley Ltd. v. Leigh [(1950) 2 All ER 29, 35] explained that the phrase "as the case may be" meant in the events that have happened. Our attention was also drawn to the expression "as the case may be" as appearing in the Words and Phrases, Permanent Edn. 4 page 596. The meaning of the expression "as the case may be" is what the expression says, i.e., as the situation may be, in other words in case there are separate and distinct units then concept of need will apply accordingly. Where, however, there is no such separate and distinct unit, it has no significance. There is no magic in that expression. The expression "as the case may be" has been properly construed in the judgment mentioned hereinbefore."

16. The Counsel for the appellant argues that the phrase "as the case may be" in the present case ought to have been considered keeping in view the obligations of the promoters restricting the transfer without issuance of completion certificate which cannot be attributed to the appellant. Reliance is also placed upon the judgment in the case of **Mahindra & Mahindra Financial Services Limited vs State of U.P.: 2019 SCC OnLine All 5336.**

17. It is further argued by the Counsel for the appellant that for preferring an appeal, there is a prescription for deposit of the amount so that the appeal can be entertained. He argues that for interpreting the word "entertained", the same has to be read as "admitting to consideration" and is not in a nature of the security and thus could not have been released in favour of the allottee as has been done by the impugned order.

18. The Counsel for the respondent, on the other hand, argues that the appeal has been filed against an order of compromise ,wherein, the facts were admitted as recorded by the Tribunal and the grant of interest according to him is a mechanical exercise in view of the prescriptions contained in Section 18(1)(a) which does not require any further exercise and thus argument of the Promoter to that effect deserves to be rejected. He places reliance upon the judgment of this Court dated 18.11.2023 passed in **RERA Appeal No.67 of 2023 (U.P. Avas Evam Vikas Parishad, Lucknow vs Dhruv Kumar Chaturvedi)** as well as on the judgment dated 08.10.2020 passed in **Writ-C**

No.13904 of 2020 (Vibhor Vaibhav Infrahomes Pvt. Ltd. vs Union of India & Ors.

19. This Court, vide order dated 28.04.2025, had admitted RERA Appeal(s) No.41, 42, 43, 44 of 2025 and the RERA Appeal Defective No.21 of 2025, now renumbered as RERA Appeal No.45 of 2025, on the following questions of law:

(i). Whether the Appellate Tribunal was justified in granting delayed interest for a period which is mentioned in its impugned order dated 17.2.2025 para 18(ii) without making any determination and without recording any reasons in respect thereof?

(ii). Whether the Appellate Tribunal was justified in making a direction as contained in para 18 (iii) of the impugned order without considering the fact that the deposit made in terms of Section 43 (5) of the Act of 2016 is primarily for the purposes of satisfying the statutory requirement of maintaining the appeal and in such circumstances, whether the pre deposit so made can be appropriated after the decision is made in favour of the respondent for whom there are separate provisions for execution in the Act and in this light whether the execution can be by passed by taking recourse to issuing such a direction?

20. In the light of the arguments raised by the respective parties, while admitting the other appeals, two additional issues were framed, which are as under:

(iii). Whether, an appeal would lie against the grant of interest under Section 18(1) of the RERA Act, granted on the basis of admission in between the parties?

(iv). Whether, grant of interest requires any adjudication or can be granted automatically as per Section 18(1) of the RERA Act?

21. In the light of the submissions as recorded above and the points determined, it is essential to note the scheme of the RERA Act. The Act in question was enacted for regulation and promotion of the real estate sector and for providing a mechanism for dispute redressal. Chapter III of the said RERA Act prescribes for functions and duties of promoter; Chapter IV provides for rights and duties of allottees; Chapter V prescribes for establishment of a Regulatory Authority and functions thereof and Chapter VI prescribes for establishing an Appellate Tribunal and the powers of the said Appellate Tribunal. In terms of the powers conferred by the said RERA Act, the Rule 2016 known as "The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016" has been enacted, which prescribes the manner, in which, the rate of interest is payable by the promoters as prescribed under Chapter V. The manner of exercise of the Regulatory Authority is prescribed in Chapter VI and the manner, in which, the Appellate Tribunal decides the appeals is prescribed under Chapter VII. Thus from the object of the Act it is clear that it is a socio beneficial legislation ,one of the objects being to protect the home buyers who do not possess the bargaining powers while entering into contracts with promoters which are generally one sided.

22. Before adverting to decide the points, it is essential to note Sections 2(za), 18, 19, 40, 43 of the RERA Act, which reads as below:

"2 (za). (za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. - For the purpose of this clause –

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

***18. Return of amount and compensation**.-(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

*19. **Rights and duties of allottees**.-(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.*

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the

promoter under sub-clause (C) of clause (1) of sub-section (2) of Section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of Section 17 of this Act.

40. Recovery of interest or penalty or compensation and enforcement of order. etc. *(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.*

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with order or direction, the same shall be enforced, in such manner as may be prescribed.

43. Establishment of Real Estate Appellate Tribunal*.-(1) The appropriate*

Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more states or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation. For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.″

23. Similarly, it is essential to reproduce Rules 15, 16 and 33 of the Rules 2016 to decide the issues, which are as under:

"15. ***Rate of interest payable by the promoter and the allottee.*** *- The Authority shall maintain a back-up, in digital form, of the contents of its website in terms of this rule, and ensure that such back-up is updated on the last day of each month.*

16. ***Timelines for refund****. - Any refund of moneys along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the rules and regulations made thereunder, shall be payable by the promoter to the allottee within forty-five days from the date on which such refund along with applicable interest and compensation, if any, becomes due.″*

33. ***Manner of filing a complaint with the regulatory authority and the manner of holding an inquiry by the regulatory authority.-****(1) Any aggrieved person may file a complaint with the regulatory authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer,*

in Form M which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank in favour of regulatory authority and payable at the main branch of that bank at the station where the seat of the said regulatory authority is situated.

Explanation. For the purpose of this sub-rule "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The regulatory authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner:

(a) Upon receipt of the complaint the regulatory authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) The notice shall specify a date and time for further hearing;

(c) On the date so fixed, the regulatory authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent:

(i) pleads guilty, the regulatory authority shall record the plea, and pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;

(ii) does not plead guilty and contests the complaint the regulatory authority shall demand an explanation from the respondent;

(d) In case the regulatory authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;

(e) In case the regulatory authority is satisfied on the basis of the submissions made that the there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by it;

(f) The regulatory authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(g) On the date so fixed, the regulatory authority upon consideration of the evidence produced before it and other records and submissions is satisfied that:

(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;

(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder the regulatory authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.

(h) If any person fails, neglects or refuses to appear, or present himself as required before the regulatory authority, the regulatory authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.″

24. On the basis of the statutory prescriptions of the RERA Act and the Rules framed therein and quoted hereinabove, it is essential to note the error committed by the Draftsmen in Rule 15 of the RERA Rules, which appears to be as a result of slipshod and a careless mistake of

the Draftsmen. Let a copy of this order be sent to Secretary, Law, Government of U.P. for taking steps for rectification of the error in drafting Rule 15.

Questions No.(i) & (iv):

(i). Whether the Appellate Tribunal was justified in granting delayed interest for a period which is mentioned in its impugned order dated 17.2.2025, para 18(ii), without making any determination and without recording any reasons in respect thereof.

&

(iv). Whether, grant of interest requires any adjudication or can be granted automatically as per Section 18(1) of the RERA Act?

Answers:

25. Since both the questions are correlated to each other, as such, the same are being decided together.

26. On plain reading of the RERA Act and the mandate contained therein, what emerges is that the RERA Act was enacted to protect the allottee in the Real Estate Project and for regulating the Real Estate Sector. Various prescriptions are contained in the RERA Act, which flow essentially from Chapter III, which prescribes for functioning and duties of the promoters and Chapter IV prescribes for rights and duties of the allottee. Several other provisions are also contained in the Act with regard to the grant of interest and/or compensation in the event of any default committed by the promoters and complying with any of the stipulations contained in Chapter III, however, interest is specifically prescribed in Section 18(1), which is in two parts in respect of allottees who wish to withdraw from the project and the allottees who wish to continue with the project.

In case of allottees who wish to withdraw

Interest is payable on demand at prescribed rates in accordance with the agreement of sale or the date of due completion as specified therein

In case of allottees who wish to continue with the project

Interest is payable for every month of delay, till the handing over of the possession, at such rates as may be prescribed. In the said section the date from which the interest is payable is not provided.

27. An attempt was made by Sri Sudeep Kumar, learned Counsel for the appellant to argue on the foundation of the phrase "as the case may be" used in Section 18 of the RERA Act to argue that the said phrase would include within its ambit, the delay, which may occur on account of 'force majeure' clause or any eventuality beyond the control of the builder/ promoter like in the present case, where the authority concerned has failed to grant completion certificate, which resulted in delay of handing over the flats in question.

28. The said argument deserves to be rejected for the simple reason that Section 18, in its plain language, prescribes for two eventualities; firstly, the grant of interest and secondly, the grant of compensation on account of there being any default on the part of the promoter. The phrase "as the case may be" used in the context of there being two eventualities for awarding interest prescribed under Section 18 itself. Firstly being the promoter fails to complete AND second being where Promoter is unable to give possession the phrase "as the case may be" in Section 18(1)(a), is to cater to these two situations. To further clarify the meaning as emerges from the plain

reading of Section 18 (1) (a) ,if the promoter fails to complete the project interest is payable according to the agreement for sale and where the Promoter fails to give possession,interest is payable with reference to duly completed by the date specified It is to meet the said two eventualities that the phrase as the case may be is used.

29. It is also essential to note that the Appellate tribunal has granted interest from 01.01.2020 {expected date of completion indicated in agreement as December 2019} to 13.10.2022 {date when offer for taking possession was sent} at the rate of MCLR + 1%. The said rate appears to be drawn from the directions given by the RERA on 19.06.2018 in exercise of powers under Section 37 of the RERA Act and the Regulation 9.2(ii) of The U.P Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 as the Rule 15 of The UP Real Estate (Regulation and Development) Rules 2016 is silent as observed above being an ex facie error by the draftsman, the same cannot be faulted with as is reasonable.

30. In the present case, admittedly, there was no dispute with regard to the date prescribed in the agreement to sale for completion of the project that was 31.12.2019 and even as per the admission, as recorded in paragraph 13 of the impugned judgment, the offer of possession was made on 05.11.2022, which fact was also admitted by the learned Counsel for the appellant during the course of the hearing before the Tribunal, thus, the normal consequence of the agreement on the three dates would result in automatic award of interest in terms of the mandate of Section 18(1)(a) and was rightly awarded by the Tribunal, thus, the Question No.(iv) is decided against the appellant.

31. The question no.(i) is with regard to the scope of powers of the Tribunal in granting the interest directly in exercise of its appellate powers prescribed under Section 43. Heading of Section 44 of the RERA Act *describes application for settlement of disputes and appeals to appellate tribunal*, thus, the said Section has two parts, firstly prescribing for an appeal against an order of an Adjudicating Officer, which can be entertained and decided within the time prescribed and in the manner as prescribed, and the second power conferred on the Tribunal as mentioned in Section 44(6) which is basically revisional powers vested in the Appellate Tribunal for examining the legality and propriety and correctness of any order or direction of the Authority or the Adjudicating Officer on its own motion or otherwise, thus, the Tribunal is vested with appellate as well as revisional powers. Although not mentioned in strict sense, it is clearly well settled that the Appellate Authority, wherever prescribed, is entitled to exercise the powers of the authority, against whose order, the appeal has been preferred at the appellate stage, more so, when no appreciation of evidence is required and only a mechanical exercise is to be performed by the Regulatory Authority. The said analogy also flows from the mandate of Order XLI Rule 24 of C.P.C., although not applicable in *stricto sensu*, however, the principles can be applied to hold that the authority has the power to pronounce judgment based upon the material on record, which according to the appellate court is sufficient to pronounce the judgment or finally determine the lis in the present case being award of interest.

32. In view thereof, the questions are decided against the appellant by holding

that the Tribunal has rightly exercised its power in granting delayed interest.

Question No.(ii):

"Whether the Appellate Tribunal was justified in making a direction as contained in para 18 (iii) of the impugned order without considering the fact that the deposit made in terms of Section 43 (5) of the Act of 2016 is primarily for the purposes of satisfying the statutory requirement of maintaining the appeal and in such circumstances, whether the pre deposit so made can be appropriated after the decision is made in favour of the respondent for whom there are separate provisions for execution in the Act and in this light whether the execution can be bye passed by taking recourse to issuing such a direction?".

Answer:

33. Coming to the Question No.(ii), as framed with regard to the power and the nature of deposit made under Section 43(5) and the power to direct the appropriation of the said amount as has been done by the Tribunal.

34. To analyse the said provision, Section 43(5) provides for a condition to be fulfilled by the appellant/ promoter as pre-deposit for the appeal to be entertained by the Tribunal. The nature and scope of pre-deposit as prescribed under Section 43 (5) is contained in various statutes as a condition for preferring an appeal and was considered extensively by Hon'ble Supreme Court in the case of **Harinagar Sugar Mills Ltd. vs State of Bihar and others:(2003) 11 SCC 40**, wherein, Hon'ble Supreme Court analyse the similar provisions, which are as under:

11. The main question, however, that needs to be considered is whether the amount deposited in view of Section 27-B of the Act is deposit of the liability of dues of fee assessed or not.

12. The amount in respect of which the Appellate Authority is to be satisfied that it has been so deposited, according to Section 27-B of the Act has to be in certain proportion of the amount of fee assessed and due. That is to say, the liability of the assessee is already fixed and the amount assessed is treated to be amount due to be paid, it is an ascertained amount out of dues which must be paid to the Committee. Therefore, there can hardly be any doubt about the fact that it is a part of the amount out of the total liability outstanding against the appellant which the appellant is required to pay to the party viz. the Market Committee before filing an appeal. It is not a deposit in court or with the Appellate Authority. Merely because liability in certain proportion is ensured to be in deposit before filing of an appeal, does not change the character of the deposit of a part of dues which is also specifically described to be fee assessed as due. It is not provided that the deposit is by way of security which would generally not be required to be paid to the party. Such deposits like security deposits are of different kind which are sometimes found provided for without reference to any monetary liability involved in the case e.g. in an election petition or other proceedings where some amount of security may be required to be deposited. In the present case, there is no scope to treat the amount deposited as anything else except part of the fee assessed and due. It is to be noted that the provision under Section 27-B of the Act is that the Appellate Authority is to be satisfied that the appellant has deposited with the Market Committee one-third of the

fee assessed before he files an appeal. It is quite obvious that in case the appeal fails what would be required to be deposited would only be the balance of the amount of the liability, if that too is not already paid. In case the appeal succeeds, the amount paid against assessed liability which is later set aside cannot be retained and in the normal course, it is liable to be refunded, unless of course for some good reasons, it is ordered otherwise. For example, where it may amount to undue enrichment of the appellant. In the case of the appeal being unsuccessful, in the normal course, nothing more would be required to be done to the extent of deposit made. Therefore, merely, because the amount deposited may have to be refunded in case an appeal succeeds that alone does not mean that the nature of the deposit is changed or it is anything else except the amount of levy assessed and due, particularly looking to the language used and provision made under Section 27-B of the Act, where the Appellate Authority has only to be satisfied about the payment made to the Committee. Some observations relating to deposit of the tax liability while filing an appeal, though in a slightly different context, throw some light as to the nature of the deposit. In Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] , SCC at pp. 202-03, para 40, this Court observed:

"In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute-book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that '... no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid'. Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it."

(emphasis supplied)

It appears that imposition of a precondition of deposit of the liability before filing an appeal was challenged but it is clearly held that a party while availing of a right to appeal conferred under a statute can be required to discharge the tax liability. Such a deposit made is described as discharge of liability. Such a condition imposed, would not change the nature of the amount paid or deposited out of the amount as assessed and found due. No doubt it is true that order assessing the liability remains under challenge but such a deposit made discharges the liability of the payment of the amount assessed and found due, to the extent of deposit made, subject indeed to the decision of the appeal.

13. We have already noticed that in all the cases cited by the learned Senior

Counsel Shri Shanti Bhushan on behalf of the appellant, the appeals were allowed and the amount was held to be refundable. Even in one of the cases, Voltas case [(1999) 112 ELT 34 : (1998) 76 DLT 841 (Del)] where after setting aside the order of assessment the matter was remanded, it was held that there was no good reason or any order against which the amount deposited as a precondition to file an appeal, could be retained. Fresh order was awaited. But where amount of liability has been assessed and fixed and the order exists, pre-appeal deposit will be nothing else but payment of a part of the liability assessed and discharged to the extent of the amount of liability paid, subject to the result of the appeal. We are not concerned with other kinds of cases where there may be different reasons for deposit of security or any amount of any other nature. Mere filing of the appeal does not absolve the appellant nor suspends the liability assessed during pendency of the appeal. It continues unless paid or set aside. Any payment made during that period when liability subsists shall be in discharge of that liability as fixed. As provided under Section 27-B of the Act the Appellate Authority has only to be satisfied that a given part of the fee assessed and due has been paid to the Committee before it entertains the appeal. There is no direction as such for the appellant to make any payment under Section 27-B of the Act. It is for the Appellate Authority to be satisfied that a part of the liability is in deposit with the Committee.

14. Considering the facts of the present case in the light of what has been observed by us above, we find that orders of assessment had been made. The liability had been fixed and the amount was determined. The Appellate Authority was satisfied that one-third amount of the fee assessed and due was paid to the Committee before filing of appeals. The appeals were dismissed. The revisions preferred thereafter were also dismissed. All statutory remedies stood exhausted. Writ petitions filed under Article 226 of the Constitution were pending when the order of this Court was rendered in Belsund Sugar Co. case [(1999) 9 SCC 620 : AIR 1999 SC 3125] . The writ petitions were disposed of in the light of the judgment of this Court without interfering with the orders of assessment and the appellate and revisional orders. In the case of Belsund Sugar Co. [(1999) 9 SCC 620 : AIR 1999 SC 3125] specific directions have been issued in exercise of powers under Article 142 of the Constitution as to in what circumstances the amount paid is to be refunded and not to be refunded. We have already quoted earlier the relevant part of the judgment in Belsund Sugar Co. case [(1999) 9 SCC 620 : AIR 1999 SC 3125] according to which the judgment was prospective in effect without affecting the past transactions and the orders, but the amount of the liability of the fee which had already been paid till the date of the order was not to be refunded but the balance which remained unpaid was also not to be recovered. In this case we have already held that the amount deposited before filing of appeals was a part of the liability assessed and found due and partly in discharge thereof. It was, therefore, not liable to be refunded and the High Court has rightly held so.″

35. A similar provisions came up for consideration before Hon′ble Supreme Court in the case of **Axis Bank vs SBS Organics Private Limited and another: (2016) 12 SCC 18**, wherein, the prescription is contained under the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) for a pre-deposit under Section 18. While preferring an appeal against any of the measures initiated under Section 13(4) of the SARFAESI Act, the Court after considering the prescriptions contained in Section 18 with regard to pre-deposit held as under:

"18. Any person aggrieved by the order of DRT under Section 17 of the Sarfaesi Act, is entitled to prefer an appeal along with the prescribed fee within the permitted period of 30 days. For "preferring an appeal", a fee is prescribed, whereas for the Tribunal to "entertain" the appeal, the aggrieved person has to make a deposit of 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. This amount can, at the discretion of the Tribunal, in appropriate cases, for recorded reasons, be reduced to 25% of the debt.

19. This Court, in Lakshmiratan Engg. Works Ltd. v. CST [Lakshmiratan Engg. Works Ltd. v. CST, AIR 1968 SC 488] , had the occasion to consider the meaning of the expression entertain in the context of a similar provision in the Uttar Pradesh Sales Tax Act, 1948 wherein it was held that in such context, the expression has the meaning of admitting to consideration. The relevant discussion is available at paras 9 and 10 : (AIR pp. 492-93)

"9. The word entertain is explained by a Division Bench [Kundan Lal v. Jagan Nath Sharma, 1962 SCC OnLine All 38 : AIR 1962 All 547] of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression entertain, it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in Dhoom Chand Jain v. Chaman Lal Gupta [Dhoom Chand Jain v. Chaman Lal Gupta, 1962 SCC OnLine All 29 : AIR 1962 All 543] in which the learned Chief Justice Desai and Mr Justice Dwivedi gave the same meaning to the expression entertain. It is observed by Dwivedi, J. that the word entertain in its application bears the meaning admitting to consideration, and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a Single Bench decision of the same court in Bawan Ram v. Kunj Behari Lal [Bawan Ram v. Kunj Behari Lal, 1960 SCC OnLine All 87 : AIR 1962 All 42] one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case (sic meaning) of the word entertain is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court in Haji Rahim Bux v. Firm Sanaullah & Sons [Haji Rahim Bux v. Firm Sanaullah & Sons, 1962 SCC OnLine All 156 : AIR 1963 All 320] , a Division Bench consisting of Chief Justice Desai and Mr Justice S.D. Singh interpreted the words of

Order 21 Rule 90, by saying that the word entertain meant not receive or accept but proceed to consider on merits" or "adjudicate upon".

10. In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would therefore appear that the direction to the court in the proviso to Section 9 is that the court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for the first time. In the decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai, C.J.) holds that the words "accompanied by" showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making "an appeal" the equivalent of the memorandum of appeal is not sound. Even under Order 41 of the Code of Civil Procedure, the expression "appeal" and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."

20. We are also conscious of the fact that such a precondition is present in several statutes while providing for statutory appeals, like the Income Tax Act, 1961, the Central Excise Act, 1944, the Consumer Protection Act, 1986, the Motor Vehicles Act, 1988, etc. However, unlike those statutes, the purpose of the Sarfaesi Act is different, it is meant only for speedy recovery of the dues, and the scheme under Section 13(4) of the Act, permits the secured creditor to proceed only against the secured assets. Of course, the secured creditor is free to proceed against the guarantors and the pledged assets, notwithstanding the steps under Section 13(4) and without first exhausting the recovery as against secured assets referred to in the notice under Section 13(2). But such guarantor, if aggrieved, is not entitled to approach DRT under Section 17. That right is restricted only to persons aggrieved by steps under Section 13(4) proceeding for recovery against the secured assets."

36. Thus, Hon'ble Supreme Court while analyzing the interest of pre-deposit prescribed under Section 18 held that there was no quantification of dispute in the proceedings under Section 13(4) and thus, the pre-deposit prescribed under Section 18, cannot be adjudicated dues. This aspect was further clarified by Hon'ble Supreme Court in the case of **M/s Kut Energy Pvt. Ltd. and others vs Punjab National Bank and others:(2020) 19 SCC 533**, wherein, the earlier judgment of the Hon'ble Supreme Court in the case of Axis Bank (Supra) was analysed to the following effect:

"11. In the present case, the deposit of Rs 40 crores in terms of the

order of the High Court on 11-10-2017 [Kut Energy (P) Ltd. v. Punjab National Bank, 2017 SCC OnLine HP 2616] was only to show the bona fides of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question and that is precisely why the High Court had directed that the deposit would be treated to be a deposit in the Registry of the High Court.

12. Going by the law laid down by this Court in Axis Bank [Axis Bank v. SBS Organics (P) Ltd., (2016) 12 SCC 18 : (2016) 4 SCC (Civ) 681] the "secured creditor" would be entitled to proceed only against the "secured assets" mentioned in the notice under Section 13(2) of the Sarfaesi Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a "secured asset" nor a "secured debt" which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court.

13. On the strength of the law laid down by this Court in Axis Bank [Axis Bank v. SBS Organics (P) Ltd., (2016) 12 SCC 18 : (2016) 4 SCC (Civ) 681] , in our view, the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11-10-2017 [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] . Their entitlement having been established, the claim of the appellants cannot be negated by any direction that the money may continue to be in deposit with the Bank."

37. Thus in view of the Judgments referred above and on the plain interpretation of Section 43(5) read with the context in which, the appeal is prescribed under the RERA Act, it is clear that the interest and/ or compensation, awarded can be challenged before the Tribunal after making the pre-deposit as required for the entertainment of the appeal. The said amount can be appropriated towards the adjudicated amount decided by the authority or the adjudicating authority as the case may be and there is no entitlement of refund unless the appeal is allowed and the order impugned is quashed by the Tribunal. The issue is answered accordingly.

38. It is however directed that the amount so deposited before the Regulatory Authority in terms of the directions given by the Appellate Authority shall be returned to the appellant, where the amounts are found to be in excess of the interest to be awarded to the allottees. It is further clarified that any amount found to be in excess of the interest payable to the allottee shall be refunded to the appellant on his moving appropriate application.

Question No.(iii)

(iii). Whether, an appeal would lie against the grant of interest under Section 18(1) of the RERA Act, granted on the basis of admission in between the parties?

Answer:

39. Coming to Question No.(iii), from the mandate of Section 58, which prescribes for remedy of appeal before the High Court, it is essential to note that

appeal can be filed on any one or more of the grounds specified under Section 100 of C.P.C. It is also essential to note Section 58 of the RERA Act, which reads as below:

(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.-The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."

40. It is also essential to notice the provision of Section 100 of C.P.C., which reads as under:

***100. Second appeal**.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from **every decree passed in appeal** by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

41. Thus, on plain reading of Section 58 of the RERA Act and Section 100 of C.P.C., it is clear that an appeal would lie only against a decree passed in appeal in any court when only substantial questions of law are involved.

42. From the submissions as recorded in the appellate order, against which, the present RERA Appeals have been filed, it is clearly recorded that there was no dispute with regard to the date of delivering of possession and the offer of possession and the only ground taken with regard to the grant of interest is contained in paragraph 8 to the effect that where the allottee has taken possession without protest and thus he is not liable to any interest for the delay in terms of Section 18(1) of the Act, there being no other submission made before the Tribunal, it is not open for the appellant to canvas new issue as was tried to be done. On both the said admission with regard to non-entitlement of interest under Section

18(1) merely because the allottee has taken the possession without protest and there being no dispute with regard to the date of possession of the project and the date of offer of possession, no appeal could be preferred before this Court in excess of what was argued before the Tribunal and thus, to that extent, the appeal would not even lie on any issue beyond what was argued before the Tribunal. Even if the submission of the Counsel for the appellant that the appellate court was wrong in recording that there was admission with regard to delay in delivery of possession and the admission was confined only to that effect that apartment could not be delivered to the allottee and there was no admission to liability to pay interest,would not alter the final out come as it is already held that the statutory interest is essentially a mathematical exercise and does not require any adjudicatory exercise.. Thus, Question No.(iii) is also answered accordingly.

43. In view of all the reasons recorded above, all the appeals filed by Promoter deserve to be dismissed and are accordingly **dismissed**. The Appeal preferred by the Allottee also deserves to be dismissed as no arguments were advanced for payment of compensation before the Tribunal and thus will not give rise to any substantial question of Law arising from the impugned judgment.

44. Senior Registrar of this Court is directed to send a copy of this order to the Secretary, Law, Government of U.P. for information and compliance.

(2025) 9 ILRA 1289
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.09.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 10397 of 2024

Varish Khan ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Sri Arun Kumar Tripathi, Swati Agarwal Srivastava

Counsel for the Opposite Party:
G.A.

ISSUE FOR CONSIDERATION

Whether applicant should be granted bail on the ground of parity with co-accused Farman, who was earlier granted bail, during pendency of trial.

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC), 1973 - Section 436A - Indian Penal Code (IPC), 1860 - Sections – 396, 412 – Arms Act, 1959 - Section - 4, 25 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 479- Second bail application filed by applicant after first was dismissed for want of prosecution – FIR - offence of brutal murder of four family members and grievous injury to one survivor - Recovery of weapons and looted property from accused persons - Co-accused Farman obtained bail allegedly by misrepresentation of facts - Court observed that, parity cannot be claimed when earlier bail order was obtained by concealment – the trial is ongoing, witnesses have been examined – held - considering the gravity of heinous offences and in the light of Supreme Court precedents, the Bail application rejected – however, trial court is directed to expedite the trial without granting any unnecessary adjournment to either of the parties. (Para – 9, 10, 11, 12, 14)
Application Rejected. (E-11)

CASE LAW CITED

Deepak Yadav vs. State of U.P. & Another, (2022) 8 SCC 559 - Shabeen Ahmad vs. State of U.P. & Another, 2025 SCC OnLine SC 479 - X vs.

State of Rajasthan & Another, 2024 SCC OnLine SC 3539.

LIST OF ACTS

Indian Penal Code (IPC) - Arms Act, 1959.

LIST OF KEYWORDS

First Bail Application – Second Bail Application - Parity Principle - Heinous Offence - Concealment of Facts - Murder and Dacoity - Recovery of Weapons - Trial in Progress - Criminal History - Expeditious Trial.

CASE ARISING FROM

Case Crime No. 136 of 2020 - Police Station: Holagarh, District Prayagraj, Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Arun Kumar Tripathi, Swati Agrawal Srivastava

Counsel for Respondent(s): Shri Mr. Rajesh Kumar Rao, learned Additional Government Advocate assisted by Ms. Pratiksha Rai, learned Brief Holder.

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

1. Heard learned counsel for the applicant, Mr. Rajesh Kumar Rao, learned Additional Government Advocate assisted by Ms. Pratiksha Rai, learned Brief Holder representing the State and perused the record.

2. The instant second bail application has been filed on behalf of applicant-Varish Khan with a prayer to release him on bail in Case Crime No. 136 of 2020, under Sections 396, 412 I.P.C. and Section 4/25 Arms Act, Police Station Holagarh, District Prayagraj, during the pendency of trial.

3. First bail application of the applicant was dismissed for want of prosecution by this Court vide order dated 01.03.2023 in Criminal Misc. Bail Application No. 33455 of 2022.

4. Brief facts of the case, which are required to be stated are that complainant-Ashok Kumar Pandey got a first information report lodged on 03.07.2020 against unknown person stating inter-alia that his younger brother, Vimlesh Kumar Pandey alias Lallan, had been living in his house in village Shukla Ka Pura, Barriharakh, Police Station Holagarh, District Prayagraj for the last about 25 years. In the night intervening 02/03.03.2020,Vimlesh Kumar Pandey alias Lallan, his daughters Km. Simu & Shibu and son Prince were hacked to death with sharp weapons by unknown persons, whereas his wife Smt. Rachna Panday received serious injures and was admitted in Swaroop Rani Hospital.

5. During investigation, complicity of five persons namely Sarik, Shahrukh, Dabar, Varish and Farman came into light and they were arrested together. They, in their statements, confessed that they have murdered the aforesaid four persons and looted money and ornaments kept in the house. They also disclosed that Shahrukh was standing outside the house and keeping a vigil on the passerby. Sarik and Mobin were armed with Chapad, Dabar was armed with axe, whereas applicant-Varish and Farman were armed with knife. Weapons of crime and money were also recovered from their possession.

6. Learned counsel for the applicant submits that co-accused Farman has been granted bail by the coordinate Bench of this Court vide order dated 19.12.2023 in Criminal Misc. Bail Application No. 1059 of 2023, hence the applicant who is languishing in jail since 17.07.2020, is also liable to be released on bail on the ground of parity.

7. In response, learned Additional Government Advocate referring paragraph No. 5 of the order dated 19.12.2023 of the co-accused Farman submits that Farman has been granted bail considering one of the submissions that despite three years having been elapsed even charge has not been framed, whereas charge was framed before passing the order dated 19.12.2023 and examination-in-chief of complainant Ashok Kumar Pandey was also recorded on 25.08.2023 as such co-accused Farman has obtained bail by placing wrong fact before the coordinate Bench and thereafter other co-accused, namely, Sarik, Mobin and Shahrukh have been granted bail on the ground of parity of bail order dated 19.12.2023 of Farman. Hence no case of parity is made out.

8. Hon?ble Supreme Court in Deepak Yadav Vs. State of U.P. and another, (2022) 8 SCC 559, after considering catena of judgements on the guiding principle for adjudicating a regular bail, held as under:

27. "The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.?

"xxxxxxxxxxxxxxxxxx"

41. ?Grant of bail to the respondent No. 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of respondent No. 2/accused, nature of crime, material evidences available, involvement of respondent No. 2/accused in the said crime and recovery of weapon from his possession."

9. Having heard learned counsel for the parties, I find substance in the submission of learned Additional Government Advocate for the State as noted above. I also find that it is a very serious matter in which four persons have been done to death and Smt. Rachna Pandey was seriously injured. Further, since co-accused Farman has obtained bail order dated 19.12.2023 by concealment of correct facts as noted above, hence parity of such order cannot be extended to the applicant. Moreover, this Court is of the view that a Judge is not bound to grant bail to an accused on the ground of parity if the order granting bail contain wrong facts. If any illegality is brought to the notice of the Court, the same shall not be permitted to perpetuate.

10. Pursuant to the order of this Court dated 19.09.2024 a report was also called for from the concerned Presiding Officer with regard to present status of trial of the applicant. Accordingly, trial court submitted its report dated 07.10.2024, which is on record. On going through the report dated 07.10.2024 of the trial court, I also find that examination-in-chief of complainant-Ashok Kumar Pandey has been recorded on 25.08.2023. Thereafter, on 03.10.2024 statement of PW-2 Pramod Kumar Yadav was recorded and on 04.10.2024 statement of PW-3 has also been recorded and the trial of the applicant is going on.

11. The Hon'ble Apex Court in the case of Shabeen Ahmad Vs. the State of U.P. and another, 2025 SCC OnLine SC 479 and 'X' vs. State of Rajasthan and another, 2024 SCC OnLine SC 3539 has held that if offence is heinous in nature and trial of the accused is in progress, bail should not be granted.

12. In view of the above, considering the gravity of offence, which is most heinous in nature and stage of trial of the applicant as well as his criminal history, I do not find any good ground to release the applicant on bail.

13. Accordingly, the instant bail application is rejected.

14. However, considering the detention period of the applicant since 17.07.2020, the trial court is directed to make an endeavour to conclude the trial of the applicant, expeditiously, without granting any unnecessary adjournment to either of the parties.

15. Copy of this order be sent to the concerned trial court for necessary information and compliance.

(2025) 9 ILRA 1292
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.09.2025

BEFORE

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

Crl. Misc. Writ Petition No. 3852 of 2025

Neha Singh Rathore @ Neha Kumari ...Petitioner

Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Kaustubh Singh

Counsel for the Respondents:
G.A.

Issue for Consideration

Whether the Petitioner's claim of fundamental right under Article 19(1)(a) of the Constitution of India is absolute or subject to reasonable restrictions on its exercise in the interests of the sovereignty and integrity of India as well as security of the State, relations with foreign State, public order, decency, or morality.

Headnotes

Constitution of India – Article 19(1)(a) and 19(2) – freedom of speech and Expression – scope of Article 19(1)(a) – not an absolute right but shall be considered subject to the reasonable restrictions – writ petition dismissed

Held:

The court after perusing the allegations of the FIR and the relevant portion of the case diary, convinced that the allegations prima facie, disclose cognizable offence, justifying an investigation by the police officers. [Para 21]

The law is trite on the point as stated above that the fundamental right under Article 19(1)(a) is not an absolute right but be subject to the reasonable restrictions in the light of Article 19(2) of the Constitution of India. The Hon'ble Supreme Court in *re; Kedar Nath Singh v. State of Bihar, 1962 AIR 955*, has observed that the State can impose restrictions to prevent speech that incites violence or undermines national unity or disrupts public order. The Hon'ble Supreme Court in *re; Dr. Ram Manohar Lohia v. State of Bihar and Others, 1966 AIR 740*, has upheld restrictions on publications containing prejudicial reports that could endanger public safety. The Apex Court upheld the restrictions on publications promoting hatred and violence between communities. [Para 22]

The judgment so cited by the learned counsel for the petitioner would not be applicable in the present case inasmuch as in r*e; Imran Pratapgadhi (supra),* the Hon'ble Supreme Court after perusing the relevant extract of the poetry has observed in para-12 that the poem does not

refer to any religion, caste or language and it does not refer to any persons belonging to any religion, therefore, by no stretch of imagination, does it promote enmity between different groups. However, the petitioner has used religious angle, Bihar election angle accusing the Prime Minister by name and saying that the B.J.P. Government is sacrificing the life of thousands of soldiers for its vested interest pushing the country in a war with a neighbouring country. [Para 25]

The petitioner is directed to participate in the investigation, which is pending pursuant to the impugned FIR, and shall appear before the Investigating Officer to cooperate in the investigation and shall further cooperate in the investigation till filing of police report. [Para 28]

This writ petition is dismissed. (E-14)

Case Law Cited

Ramji Lal Modi Vs. State of U.P., 1957 SCC OnLine SC 77; Ajeet Yadav vs. State of U.P. and 2 others, Criminal Misc. Writ Petition No.11525 of 2025; Deepak Vs. State of U.P. & Others, Criminal Misc. Writ Petition No.2077 of 2023; Neeharika Infrastructure Private Limited vs. State of Maharashtra: AIR 2021 SC 1918; P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24; Kedar Nath Singh v. State of Bihar, 1962 AIR 955 – referred to; Dr. Ram Manohar Lohia v. State of Bihar and Others, 1966 AIR 740 – followed; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 – applied; Imran Pratapgadhi vs. State of Gujarat and another 2025 SCC OnLine SC 678 – not applicable.

List of Acts/Statutes

Constitution of India; Bharatiya Nyaya Sanhita, 2023; Information Technology Act, 2000.

List of Keywords

Article 19; Constitution of India; freedom of speech and expression; scope of Article 19; not absolute; reasonable restrictions; preservation of public order, decency or morality; fair, independent, and impartial investigation.

Appearance of Parties

For the Petitioner: Kaustubh Singh
For the Respondent: G.A.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
&
Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Heard Sri Kamal Kishore Sharma, learned counsel for the petitioner, Sri (Dr.) V. K. Singh, learned Government Advocate assisted by Sri S. N. Tilhari, learned AGA and Sri Vipul Kumar Singh, learned State counsel for the State and perused the record.

2. By means of this petition, the petitioner has prayed for following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari, quashing the impugned First Information Report dated 27.04.2025, lodged by opp-party no.2 at Police Station Hazratganj, District Lucknow, registered as Case Crime No.0111 of 2025, under Sections 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 of BNS, 2023 and 69a of the IT Act, 2008, as contained in Annexure No. 1 to this writ petition.

(ii). issue a writ, order or direction in the nature of mandamus, commanding the opp-party no.3, not to arrest, humiliate, harass, and victimize the petitioners, on the basis of the impugned First Information Report dated 27.04.2025, registered as Case Crime No.0111 of 2025, under Section 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 of BNS, 2023 and 69a of the IT Act, 2008, at Police Station Hazratganj, District Lucknow, as contained in Annexure no.1."

3. Learned counsel for the petitioner has drawn attention towards the impugned FIR which has been lodged under so many sections levelling allegations against the petitioner. He has also submitted that, prima facie, those offences do not make out against her. Sri Sharma has further stated that the petitioner is a singer and a social activist and is having fundamental right under Article 19(1)(a) of the Constitution of India to express her views on social media and no authority of the State can violate such fundamental right.

4. Sri Sharma has drawn attention of this Court towards the grounds: L, M, N & O of the writ petition saying that the allegations of the FIR do not attract the ingredients of those sections under which the FIR has been lodged. For the convenience, grounds: L to O reads as under:

"L. Because even if the post of the accused petitioner spoken by words has become viral amongst different groups of the person will not attract any of the provisions of Sections 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d). Such post of petitioner having become viral in our country or other countries cannot in any manner be said to be prejudicial to the maintenance of harmony among the various groups of person belonging to different caste and religion hence the registration of the FIR under the aforesaid section is nothing but a gross abuse of the process of law.

M. Because not even a single ingredient of this Section also is prima facie made out because the petitioner has not made or published or circulated any statement or any so-called false information including electronic means which would amount to having incited any class or community or any person to commit any offence against any other class and community.

N. Because by reading each and every content of the FIR sought to be quashed even through the magnifying glasses no person having the common knowledge of the observation can say that the words spoken, written and published by the accused would have excited cessation or armed rebellion or subversive activity encouraging feelings of separatists or endangering sovereignty and integrity of India making the accused liable for the imprisonment of life. The leveling of such allegation of such a higher magnitude without any iota of evidence seems to be ridiculous in nature without any legs to stand even.

O. Because no offence under Sections 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 of BNS, 2023 and 69a of the IT Act, 2008 has ever been committed by the petitioner herein."

5. Sri Sharma appearing on behalf of the petitioner has relied upon the judgement passed by the Hon'ble Apex Court in re; Imran Pratapgadhi vs. State of Gujarat and another reported in 2025 SCC OnLine SC 678. He has drawn attention of this Court to a portion of poem by one Imran Pratapgarhi and submitted that the Hon'ble Supreme Court has declared protected the said poetry under Article 19(1)(a) of the Constitution of India.

6. Sri Sharma has categorically made a submission before the Court that investigation is going on pursuant to the

impugned FIR and the petitioner is ready to cooperate in the investigation. He contended that the petitioner has not been served with any notice or summon pursuant to the impugned FIR.

7. Per contra, Sri V.K. Singh, learned Government Advocate has submitted at the very outset that during the course of investigation, Sections 152 and 159 B.N.S. have been added. Learned Government Advocate has also stated that in the present case the judgment of Apex Court in re: Imran Pratapgadhi (supra) would not be applicable.

8. Learned Government Advocate has shown the relevant papers of the case diary to apprise the incriminating materials affecting the integrity and sovereignty of the country. In the case diary, there are some contents/ tweets of the petitioner on her social media account.

9. Tweet No.15 posted by the petitioner reads as under:-

"कश्मीर मेंआतंकी हमला हुआ और उसके फ़ौरन बाद मोदीजी नेआज बिहार मेंरैली कर दी... बिहार के मंच से ही पाकिस्तान को धमका दिया और जनता ने भी ताबड़तोड़ तालियाँ पीट दीं... जो लोग भी मोदीजी की पॉलिटिक्स और बिहार की हालत को जानतेहैं,हैं उन्हें खूब समझ मेंआ रहा हैकि पाकिस्तान को धमकी देने केलिए मोदीजी को बिहार क्यों आना पड़ा! उन्हें बिहार इसलिए आना पड़ा... ताकि बिहार की जनता सेराष्ट्रवाद के नाम पर वोट बटोरा जा सके... और बिहार की जनता केमुद्दों को फिर सेसाइडलाइन किया जा सके... अब मोदीजी और उनकेसाथ वालों को काम CRLP No. 3852 of 2025 3 के नाम पर तो वोट मिलना हैनहीं... क्योंकि काम तो हुआ ही नहीं ह... ै और भ्रष्टाचार इतना हुआ हैकि ईमानदारी से चुनाव हो तो बहुतों की जमानत जब्त हो जाये. बिहार चुनाव मेंउन्हें या तो हिंदू-मुसलमान के नाम पर वोट मिल सकता हैया भारत-पाकिस्तान के नाम पर... तीसरा कोई रास्ता नहीं ह... और ये लोग बा ै क़ी दोनों रास्ते अख्तियार करेंगे."

10. Tweet No.16 reads as under:- "आतंकवादियों को ढूँढने और अपनी गलती मानने की बजाय भाजपा देश को युद्ध मेंझोंकना चाहती ह... ै भाजपा देश के हज़ारों सैनिकों की जान जोखिम में डालना चाहती ह."ै

11. Tweet No.34 posted by the petitioner reads as under:- "जब कलमा पढ़ने से इनकार करने पर गोली मार ही दी गई तो ये क़िस्सा मीडिया को किसने बताया? मृतकों में एक नाम सईद हुसेन शाह का भी ह. ै क्या सईद ने भी कलमा पढ़ने से इनकार किया था? अपने दिमाग लगाइये... वो मत सोचिये जो भाजपा चाहती ह."ै

12. Learned Government Advocate has also stated that the social media account of the petitioner has been widely circulated in the world specially in Pakistan and so many posts have been received during the investigation from Pakistan supporting the contents of present petitioner. Learned Government Advocate has further submitted that timings of the aforesaid propagative tweets is worth noticing inasmuch as on 22.04.2025, the unfortunate incident took place at Pahalgam, Jammu & Kashmir wherein 26 tourists have been brutally killed by the terrorists after knowing the religion of the tourists as all the tourists were Hindu by religion. At that point of time, security and integrity of the country was under threat and the Government was taking all possible efforts to curve such situation but during that period, the present petitioner started making aforesaid tweets without thinking that the situation is so sensitive and that time of tweets should not be circulated on the social media. He submitted that bare perusal of the aforesaid tweets would make it crystal clear that the petitioner is having so much vengeance against Bhartiya Janta Parity and its leaders including the Prime Minister. In her tweets, she commented on State politics of Bihar having ulterior motive and extraneous design in her mind.

She commended that the B.J.P. is willing to start war and is willing to sacrifice thousands of Army Soldiers. She tried to create the Hindu-Muslim angle, therefore, the basic fabric of the country where Hindu and Muslim live together peacefully has been tried to be distorted by the petitioner. The aforesaid illegal act and misdeed of the petitioner may not be protected in the light of Article 19(1)(a) of the Constitution of India but such right may be denied under sub-clause (2) of Article 19 of the Constitution of India which categorically provides that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India as well as security of the State, friendly relations with foreign State, public order, decency or morality.

13. Learned Government Advocate has referred the dictum of the Apex Court in re; Ramji Lal Modi Vs. State of U.P., 1957 SCC OnLine SC 77, wherein the view of the Apex Court is that the claim of fundamental right under Article 19 (1)(a) of the Constitution of India is not absolute but the said fundamental right shall remain subject to the reasonable restrictions.\

14. Learned Government Advocate has referred the judgment of the Division Bench in re: Ajeet Yadav vs. State of U.P. and 2 others, Criminal Misc. Writ Petition No.11525 of 2025, wherein vide order dated 03.06.2025, the Division Bench has observed as under:

"A post written by the petitioner against the Prime Minister regarding his decision to desist from war etc. carries scurrilous language against the Head of the Government. It was published on the social media before it was reported to the Police, leading to registration of the impugned FIR.

Learned counsel for the petitioner has vehemently argued that the petitioner is a young man and was carried away by emotions.

Emotions cannot be permitted to overflow to an extent that Constitutional Authorities of the country are dragged into disrepute by employment of disrespectful words.

In the totality of circumstances, we do not find it to be a fit case to interfere with the impugned FIR in exercise of our jurisdiction under Article 226 of the Constitution.

The petition is dismissed, accordingly."

15. As per Sri V.K. Singh, the Hon'ble Supreme Court in re; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, summarised the legal position by laying the following guidelines to be followed by the High Courts in exercise of their inherent jurisdiction:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not

disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. Sri Singh has stated that in view of the aforesaid guidelines, the present writ petition is not maintainable inasmuch none of the aforesaid guidelines are being attracted in the facts and circumstances of the present case to quash/ set aside the impugned FIR. In the present case, the allegations made in the First Information Report, prima facie, constitute the offences under which the FIR has been lodged. Further, the material so collected by the investigating agency discloses cognizable offence justifying an investigation by the police under Section 156(1) of the Code.

17. The learned Government Advocate has drawn the attention of this Court towards the judgment and order dated 21.03.2023 passed in Criminal Misc. Writ Petition No.2077 of 2023, Deepak Vs. State of U.P. & Others, dismissing the writ petition thereby the FIR was assailed wherein the allegation against that petitioner was that he had made derogatory and disrespectful comments on Hon'ble the Chief Minister of U.P. and others. Relevant portion of the aforesaid judgment reads as under:-

"After having heard submissions advanced by learned counsel for parties and perused the impugned F.I.R., it is apparent that the petitioner had made a derogatory and disrespectful comments on Hon'ble Chief Minister of U.P., Yogi Adityanath Ji and Bageshwar Baba, Shri Dhirendra Shastri. Moreover, from the allegations made in the F.I.R. as a subject matter of investigation and at this stage it cannot be said that no offence, whatsoever is made out against the petitioner.

In view of the ratio laid down by the Apex Court in Neeharika Infrastructure

Private Limited vs. State of Maharashtra: AIR 2021 SC 1918 and on perusal of the impugned F.I.R. and material on record, it transpires that, prima facie, a case is made out against the petitioner. The submissions made by the learned counsel for the petitioners relates to disputed questions of facts, which cannot be adjudicated upon by this Court in jurisdiction of under Article 226 of Constitution of India.

From the perusal of the F.I.R., prima facie, it cannot be said that no cognizable offence is made out, hence no ground exists for quashing of the F.I.R. or staying the arrest of the petitioner. The writ petition is, accordingly, dismissed."

18. Sri V.K. Singh has also relied upon the judgment of the Apex Court in re; P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24, wherein the Apex Court in para-66 has held as under:-

"66. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused."

19. At last, learned Government Advocate has stated that since the investigation is going on and cooperation of the petitioner is required in the aforesaid investigation and during the course of investigation, the investigating authority shall follow the relevant provisions of law, so this writ petition is misconceived at this stage.

20. Having heard learned counsel for the parties and having perused the material available on record, we are of the considered opinion that although Article 19 of the Constitution of India gives all citizens the rights regarding freedom of speech and expression but subject to reasonable restrictions for preserving inter-alia public order, decency or morality. It is trite in law that the extent of protection of speech and expression would depend on whether, such speech and expression would constitute a propagation of ideas or would have any social value. If the answer to the said question is in affirmative, such speech would be protected under Article 19 (1) (a); if the answer is in negative, such speech and expression would not be protected under Article 19 (1) (a) of the Constitution of India.

21. After perusing the allegations of the FIR and the relevant portion of the case diary, we are convinced that the allegations in the First Information Report and other material, prima facie, disclose cognizable offence, justifying an investigation by the police officers.

22. The law is trite on the point as stated above that the fundamental right under Article 19(1)(a) is not an absolute right but the aforesaid right shall be considered subject to the reasonable restrictions in the light of Article 19(2) of

the Constitution of India. The Hon'ble Supreme Court in re; Kedar Nath Singh v. State of Bihar, 1962 AIR 955, has observed that the State can impose restrictions to prevent speech that incites violence or undermines national unity or disrupts public order. The Hon'ble Supreme Court in re; Dr. Ram Manohar Lohia v. State of Bihar and Others, 1966 AIR 740, has upheld restrictions on publications containing prejudicial reports that could endanger public safety. It has been the consistent view of the Constitutional Courts that the restrictions may be imposed to prevent speech that incites violence, riots or public disorder. The Apex Court upheld the restrictions on publications promoting hatred and violence between communities.

23. In view of the facts, circumstances and reasons as well as the case laws so cited by the learned counsel for the parties, as considered above, since the allegations of the FIR and other material disclose, prima facie, cognizable offence, justifying investigation by the police officers, we are not inclined to interfere in the impugned FIR.

24. Further, the present case so placed and argued by the learned counsel for the petitioner does not qualify the touchstone of the guidelines so formulated by the Apex Court in re; Bhajan Lal (supra). We are in respectful agreement with the judgement of the Apex Court in re; Bhajan Lal (supra).

25. The judgment so cited by the learned counsel for the petitioner would not be applicable in the present case inasmuch as in re; Imran Pratapgadhi (supra), the Hon'ble Supreme Court after perusing the relevant extract of the poetry has observed in para-12 that the poem does not refer to any religion, caste or language and it does not refer to any persons belonging to any religion, therefore, by no stretch of imagination, does it promote enmity between different groups whereas in the present case, timings of the tweets of the petitioner are so crucial and worth considering inasmuch as the aforesaid tweets have been circulated immediately after the unfortunate incident dated 22.04.2025 at Pahalgam, Jammu & Kashmir. The case diary as placed before us shows that there are so many tweets but some of them have been reproduced in this order that goes to show that the posts written by the petitioner are against the Prime Minister of India and Home Minister of India. Name of the Prime Minister of India has been used in a derogatory and disrespectful manner. In such comments, the petitioner has used religious angle, Bihar election angle accusing the Prime Minister by name and saying that the B.J.P. Government is sacrificing the life of thousands of soldiers for its vested interest pushing the country in a war with a neighbouring country.

26. Since the investigation is going on, therefore, we restrain ourselves to comment on the merits of the issue having expectation that fair, independent and impartial investigation is conducted and concluded strictly in accordance with law, without being influenced from any observation made herein above and the same may not affect the investigation in any manner whatsoever.

27. In view of what has been considered herein above, this writ petition is dismissed being misconceived.

28. The petitioner is directed to participate in the investigation, which is

pending pursuant to the impugned FIR, and she shall appear before the Investigating Officer on 26.09.2025 at 11.00 a.m. sharp to cooperate in the investigation and shall further cooperate in the investigation till filing of police report.

(2025) 9 ILRA 1300
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MADAN PAL SINGH, J.

Crl. Misc. Writ Petition No. 16946 of 2024
With
Application U/S 528 BNSS No. 40591 of 2024
With
Crl. Misc. Writ Petition No. 17602 of 2024
With
Crl. Misc. Writ Petition No. 18422 of 2024

Navneet Sachan ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Abhishek Kumar Mishra, Sri Chandrakesh Mishra, Sr. Advocate

Counsel for the Respondents:
G.A.

Issue of Consideration

Whether the "due discussion" required under Rule 5(3)(a) of the Gangster Rules, 2021 was a substantive application of mind by the authorities or a mere empty formality thereby vitiating FIR under the Act.

Headnotes

U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 - Section 2/3 – group of persons acting either singly or collectively with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage – Section 5 – Preparation of gang chart - due discussion must disclose - disturbance of the public order - gaining of any undue temporal pecuniary material or other advantage - writ petition and application allowed

Held:

The Court is of the view that even if the first information report did not mention the details with regard to the disturbance of the public order and gaining of any undue temporal pecuniary material or other advantage but the "due discussion" definitely ought to have mentioned about them. The "due discussion" was an empty formality and, therefore, Rule 5(3)(a) of the Gangster Rules, 2021 was not followed. It is a discussion which is privately done between the police officials and the district administration and they need not be made open to the public as well as the ingredients **of the due discussion may not even** be mentioned in the first information report but when the due discussion was brought before the Court , it should make out from the reading of it that the due discussion was not done summarily but the officials had applied their minds to the effect that the accused under the Gangster Act, 1986 was disturbing public order and was gaining pecuniary and temporal advantage. The due discussion should not be an empty formality. The Court found that the gang leader, Abbas Ansari, was transferred to Kasganj Jail has also not been considered in the due discussion. Also, in between the passing of the judgment and order of the dated 15.5.2024 in Criminal Misc. Writ Petition No. 2094 of 2024 and till the lodging of the instant First Information Report no new facts had been brought on record to illustrate that the petitioner was still functioning as a member of any gang and that he was disturbing public order and making any undue temporal pecuniary material or other advantage. [Para 10]

The writ petition stands allowed. The Application u/s. 528 BNSS stands allowed and the Non-Bailable Warrant stands quashed. The writ petitions vis-a-vis the petitioners in Criminal Misc. Writ Petition No. - 17602 of 2024 and in Criminal Misc. Writ Petition No. - 18422 of 2024 are also accordingly, allowed. First Information Report dated 31.8.2024 given rise to Case Crime No. 556 of 2024, under Sections 2/3 of

Gangster Act, 1986 is quashed. [Para 11 and 12] (E-14)

Case Law Cited

Abdul Lateef @ Mustak Khan vs. State of U.P. And Others (2024) 128 ACC 876; Kamalveer Singh vs. State of U.P. and Ors, 2025 SCC OnLine All 3141 – relied on.

List of Acts/Statutes

U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986; Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021; Indian Penal Code, 1860

List of Keywords

Gangster Act, 1986; Gangster Rules, 2021; Gang Chart; Due Discussion; Jail; illegal activities on jail premises; Disturbance of public order; Gain of pecuniary and temporal advantage

Appearance of Parties

Counsel for the Petitioner: Abhishek Kumar Mishra, Chandrakesh Mishra, Sr. Advocate

Counsel for the Respondent: G.A.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Madan Pal Singh, J.)

1. Heard Sri Daya Shankar Mishra, learned Senior Advocate assisted by Sri Chandrakesh Mishra and Sri Abhishek Mishra, learned counsel for the petitioner in CRIMINAL MISC. WRIT PETITION No. - 16946 of 2024 and in APPLICATION U/S 528 BNSS No. - 40591 of 2024; Sri Upendra Upadhyay, learned counsel for the petitioner in CRIMINAL MISC. WRIT PETITION NO. - 17602 OF 2024; Sri Prabha Shanker Mishra, learned counsel for the petitioner in CRIMINAL MISC. WRIT PETITION NO. - 18422 OF 2024 and Sri Manish Goyal, learned Additional Advocate General assisted by Sri J.K. Upadhyay and Sri Rupak Chaube, learned counsel for the State.

2. The petitioner has challenged the First Information Report dated 31.8.2024, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the Gangster Act, 1986□) which had given rise to Case Crime No. 0556 of 2024, Police Station Karvi Kotwali Nagar, District - Chitrakoot.

3. Sri Daya Shankar Mishra, learned Senior Advocate assisted by Sri Chandrakesh Mishra and Sri Abhishek Kumar Mishra, learned counsel for the petitioner has argued that the first information report which was lodged under Section 2/3 of the Gangster Act, 1986 is dependent on the rules of Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as the Gangster Rules, 2021). He has submitted that as per the rules, there has to be, before the lodging of the first information report, a preparation of the gang chart which is as per Rules 5(1) of the Gangster Rules, 2021. The In-charge of police station has to prepare a gang chart wherein are mentioned the criminal details of a particular gang. The gang chart thereafter is presented as per Rule 5(2) of the Gangster Rules, 2021 to the District Head of Police after a clear recommendation of the Additional Superintendent of Police mentioning therein the detailed activities in relation to all the persons of the said gang. Learned counsel for the petitioner further submitted that as per Rule 5(3)(a) of the Gangster Rules, 2021 before a gang chart is prepared it has to be approved, but not summarily. It is approved only after a □due discussion□ is done in a joint meeting of the

Commissioner of Police, District Magistrate, Senior Superintendent of Police and Superintended of Police. The other provisions with regard to how the gang chart has to be prepared are contained in Rules 5(3)(b), 5(3)(c), 5(3)(d) and 5(3)(e) of the Gangster Rules, 2021.

4. Since learned counsel for the petitioner heavily relied upon Rule 5 of the Gangster Rules, 2021, the same is being reproduced here as under:-

5. General Rules.-(1) To initiate proceedings under this Act, the concerned Incharge of Police Station/Station House Officer/Inspector shall prepare a gang-chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(3) The following provisions shall be complied with in respect of gang-charts:

(a) The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.

(b) There may be no gang of one person but there may be a gang of known and other unknown persons and in that form the gang-chart may be approved as per these rules.

(c) The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

(d) Those cases shall not be mentioned in the gang-chart, on the basis of which action has already been taken once under this Act.

(e) A separate list of criminal history, as given in Form No.-4, shall be attached with the gang-chart detailing all the criminal activities of that gang and mentioning all the criminal cases, even if acquittal has been granted in those cases or even where final report has been submitted in the absence of evidence.

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang members mentioned in the gang-chart will also be updated on Interoperable Criminal Justice System (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

5. Learned counsel for the petitioner to make the record straight submitted that on the basis of the base case numbered as Case Crime No. 88 of 2023 for which the first information report was lodged on 10.2.2023 the gang-chart vis-a-vis the petitioner was prepared. In the base case the petitioner was not named but only one Prahlad Sahani had mentioned his name and he was implicated in the Case Crime No. 88 of 2023. Therefore on the basis of it a first information report was lodged under Section 3/2 of the Gangster

Act, 1986. On 29.1.2024 when the first information report had given rise to Case Crime No. 0079 of 2024, it was challenged before the High Court by means of a writ petition being Criminal Misc. Writ Petition No. 2094 of 2024 (Navneet Sachan vs. State of U.P. And 2 Others) and the High Court by an order dated 15.5.2024 had quashed the first information report dated 29.1.2024. However, in the judgment and order passed by the High Court dated 15.5.2024, it was provided that the respondents could initiate fresh proceedings against the petitioner if it was so required after following the due procedure of law.

6. Learned counsel for the petitioner submits that to initiate the proceeding again under the Gangster Act, the In-charge of Police had prepared a gang chart and in it had mentioned the details of the criminal activities of the gang and had presented it to the District Head of the Police on 25.8.2024. This document has annexed as Annexure No. CA-3 to the counter affidavit filed in the writ petition. In the report which the Sub-Inspector Thana Karvi Kotwali Nagar, District Chitrakoot had submitted on 25.8.2024 it was stated that in the Jail of Chitrakoot where Abbas Ansari was arrested, his wife Nikhat Bano was meeting him illegally and on 10.2.2023 a secret information was received that illegal activities were going on in the jail premises. The wife of Abbas Ansari was visiting Abbas Ansari for many hours together. On the basis of this information, the District Magistrate had visited the jail and had inspected the barrack and had found that Abbas Ansari was not in the barrack where he was supposed to be. When the barrack of Abbas Ansari was checked, it was found that it had two mobile phones, gold jewellery and Rs. 21,000/-. Also 12 Saudi Riyals were found and this had given rise to Case Crime No. 88 of 2023, under Sections 387, 222, 186, 506, 201, 120-B, 195-A, 34 of I.P.C. read with sections 7/8/13 of the Prevention of Corruption Act and the other offences which were reported were with regard to Section 42(b) and Section 54 of Prisoners Act. All the sections were read alongwith Section 7 of the Criminal Law Amendment Act. During investigation, Section 451, 511 of I.P.C. were added. Investigation when had commenced then vis-a-vis the petitioner, Navneet Sachan, also an investigation had commenced under Section 387, 506, 201, 120-B, 195-A, 34, 451, 511 of I.P.C. read with section 8 of the Anti Corruption Act, 42(b), 54 of Prisoners Act and Section 7 of the Criminal Law Amendment Act. It was reported that the gangs leader Abbas Ansari had been transferred from Naini Central Jail, Prayagraj to the Chitrakoot Jail. After the incident had occurred which had led to the lodging of the first information report dated 10.2.2023 which had given rise to Case Crime No. 88 of 2023, Abbas Ansari was transferred on 14.2.2023 to the District Jail of Kasganj. It has been stated that Abbas Ansari was a very dreaded criminal and because of his threats, no one could give evidence against him. When investigation was going on, it was found that the gang leader Abbas Ansari with other gang members was very much active. It was also stated in the report that against the gang leader Abbas Ansari proceedings were also initiated under the National Security Act (NSA). A report was, therefore, sent for the initiation of proceedings under the Gangster Act, 1986. This report was dated 25.8.2024. Learned counsel for the petitioner has thereafter submitted that this report as per Rule 5(3)(a) of Gangster Rules, 2021 came for the approval before

the Commissioner of Police and the District Magistrate and a joint meeting was held between the Superintended of Police, Chitrakoot and District Magistrate, Chitrakoot on 29.8.2024. In the joint meeting, learned counsel for the petitioner has submitted that, it had to be seen that the two officials did not simply approve the gang chart summarily but had done so after a due discussion in which they had prima facie found that the gang was, either by means of violence or by threat or by show of violence or by intimidation or coercion, disturbing public order or was in the process of gaining undue temporal pecuniary, material or other advantages for the gang members. Learned counsel for the petitioner states that the entire due discussion dated 29.8.2024, by which the gang chart was approved, did not show such an application of mind during the due discussion which could show that the gang members and its leader were indulging in violence or threat or show of violence to disturb public order or to gain any undue temporal pecuniary material or other advantages for themselves. Learned counsel for the petitioner, therefore, states that a due discussion was one which was a routine discussion which has only approved the report which was sent by the Inspector In-charge of the Thana Karvi Kotwali Nagar on 25.8.2024. Learned counsel for the petitioner relying upon the judgments of this Court reported in (2024) 128 ACC 876; (Abdul Lateef @ Mustak Khan vs. State of U.P. And Others) and in Kamalveer Singh vs. State of U.P. and Ors. reported in 2025 SCC OnLine All 3141 submitted that the prior joint meeting for the approval of the gang chart had to disclose that there was a due discussion wherein it was found that the gang was indulging in violence etc. for disturbing of public order and was in the process of gaining any undue temporal pecuniary material or other advantage. Learned counsel for the petitioner further submitted that after the judgment and order of the High Court was passed in Criminal Misc. Writ Petition No. 2094 of 2024 on 15.5.2024 and before the instant impugned first information report was lodged on 31.8.2024 the activities of the petitioner in between 15.5.2024 to 31.8.2024 had also to be looked into and reported.

7. In the instant case, learned counsel for the petitioner states that when the gang leader was transferred on 14.2.2023 to the District Jail, Kasganj and when the petitioner could not meet him at all then there was absolutely no evidence of the fact that the petitioner alongwith the alleged gang leader was operating as a gang. Learned counsel for the petitioner further submits that an argument was made by the learned Additional Advocate General that the petitioner was not participating in the sessions trial which was going on vis-a-vis the Case Crime No. 88 of 2023. In reply to this argument of the State the learned counsel for the petitioner has attached the entire order-sheet of the case which shows that the petitioner had been attending the court and had never been absconding. He did not appear only on such dates when his counsel had moved the application for his exemption. Learned counsel for the petitioner further submits that none of the anti social activities which were delineated in the definition clause under Section 2b (i to xxv) of the Gangster Act, 1986 were to be found while branding the petitioner as a gangster.

8. Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rupak Chaube, however, has submitted that the petitioner, Navneet Sachan, was

supplying money regularly to the Jail Authorities and was bribing them constantly and that the gang was involved in various activities which could be said were such which would brand the petitioner as a member of the gang. He has submitted that since the petitioner was implicated under Section 387 of IPC, therefore, it could be said that he had committed crimes under Chapter XVI of IPC. Further, since he was involved in the criminal intimidation as per Section 506 of IPC, he was a gangster having done activities under Chapter XVII of I.P.C. and, therefore, the requirements of Clause 2(b) of the Gangster Act, 1986 was satisfied. Still further he submitted that the petitioner was involved under Section 2b(xxv) of Gangster Act, 1986 as his activities were impacting the security of State and public order. Learned Additional Advocate General states that non-disclosure of the name of the accused in the first information report would not be a ground for the quashing of the first information report. He also submitted that if there was no disclosure of the specific details of how the petitioner was disturbing public order and making any undue temporal pecuniary material or other advantage then also there was nothing wrong. Learned Additional Advocate General submitted that the Rule 5(3)(a) of Gangster Rules, 2021 was adhered to systematically and it matters little if the due discussion had not mentioned the disturbance of public order and the gain of any undue temporal pecuniary material or other advantage. Learned Additional Advocate General further submitted that there was proper compliance of Rules 16 and 17 of the Gangster Rules, 2021 also when the gang chart was forwarded.

9. Having heard Sri Daya Shankar Mishra, learned Senior Advocate assisted by Sri Chandrakesh Mishra and Sri Abhishek Mishra, learned counsel for the petitioner and Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rupak Chaube, learned counsel for the State, this Court is of the view that a perusal of the joint meeting dated 29.8.2024 shows that verbatim the report dated 25.8.2024 of the Sub-Inspector of the thana had been reproduced and that there is absolutely no prima facie finding with regard to the fact as to how the petitioner as an alleged member of the gang was disturbing public peace and gaining any undue temporal pecuniary material or other advantage.

10. We are definitely of the view that even if the first information report did not mention the details after forwarding the gang chart with regard to the disturbance of the public order and with regard to the gaining of any undue temporal pecuniary material or other advantage but the due discussion definitely ought to have mentioned about them. In the absence of the prima facie finding in the due discussion with regard to the disturbance of public order by the petitioner and also with regard to the gains of any undue temporal pecuniary material or other advantage, we are of the view that the due discussion was an empty formality and, therefore, Rule 5(3)(a) of the Gangster Rules, 2021 was not followed. The due discussion is a discussion which is privately done between the police officials and the district administration and they need not be made open to the public and in fact the ingredients of the due discussion may not even be mentioned in the first information report but when the due discussion was brought before us i.e. the Court, the Court should make out from the reading of it that the due discussion was not done summarily

but the officials had applied their minds to the effect that the accused under the Gangster Act, 1986 was disturbing public order and was gaining pecuniary and temporal advantage. The Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 is an act which makes the use of certain earlier cases in which the accused is already being tried and if the accused is to be now further tried under the Gangster Act, 1986 then special reasons have to be given after due discussion in a joint meeting between the police officials and the district administration. The due discussion should not be an empty formality. We also find that the gang leader, Abbas Ansari, was transferred to Kasganj Jail on 14.2.2023 and this aspect of the matter has also not been considered in the due discussion. Also, we find that in between the passing of the judgment and order of the High Court dated 15.5.2024 in Criminal Misc. Writ Petition No. 2094 of 2024 and till the lodging of the instant First Information Report dated 31.8.2024, no new facts had been brought on record to illustrate that the petitioner was still functioning as a member of any gang and that he was disturbing public order and making any undue temporal pecuniary material or other advantage.

11. Thus for the reasons mentioned above, the writ petition stands allowed. Also the Application U/S 528 BNSS No. - 40591 of 2024 stands allowed and the Non-Bailable Warrant stands quashed. The writ petitions vis-a-vis the petitioners in Criminal Misc. Writ Petition No. - 17602 of 2024 and in Criminal Misc. Writ Petition No. - 18422 of 2024 are also accordingly, allowed.

12. The First Information Report dated 31.8.2024 which had given rise to Case Crime No. 556 of 2024, under Sections 2/3 of Gangster Act, 1986 is quashed. Also the gang-chart on the basis of which the first information report was lodged is quashed.

(2025) 9 ILRA 1306
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.09.2025

BEFORE

THE HON'BLE RAJIV LOCHAN SHUKLA, J.

Criminal Revision No. 3893 of 2017

Sweta Jaiswal ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Sri Bipin Kumar, Sri Mohd. Naushad Siddiqui

Counsel for the Opposite Parties:
G.A.

Issue for Consideration
Whether the refusal of maintenance to the revisionist–wife under Section 125(4) Cr.P.C. was sustainable when the Family Court treated a voidable marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955 as a bar to maintenance, despite absence of any decree of nullity and without establishing that the wife was living separately without sufficient cause.

Headnotes
Code of Criminal Procedure, 1973 — s.125, s.125(4) — Maintenance — Living separately "without sufficient cause" — Burden and findings — Perversity — Hindu Marriage Act, 1955 — s.12(1)(c) — Voidable marriage — Effect in absence of decree of nullity — Right to maintenance — Remand- Revision allowed.

HELD:

A voidable marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955 does not by itself disentitle the wife from claiming maintenance under Section 125 Cr.P.C. Unless and until the marriage is annulled by a decree of nullity, the marital status subsists and the statutory rights flowing therefrom continue. Denial of maintenance on a hypothetical premise that the marriage *could* be annulled is legally impermissible. [Paras 9–12]

The Family Court committed patent illegality and perversity in invoking Section 12(1)(c) HMA to attract the bar under Section 125(4) Cr.P.C. without any annulment proceedings or decree, and by drawing inferences alien to the pleadings and evidence. A passing reference to concealment of a previous marriage/divorce could not, by itself, establish that the wife was living separately without reasonable cause. [Paras 7–10, 12–13]
Section 125 Cr.P.C. being a social justice measure, denial of maintenance requires strict proof of the statutory bar. Where the marriage subsists, maintenance cannot be refused on conjectural considerations. The impugned order refusing maintenance to the wife was therefore unsustainable. [Paras 10–13]

Order refusing maintenance to the wife set aside; matter remanded to the Family Court to decide afresh only the wife's claim in light of the observations; maintenance awarded to the minor daughter left undisturbed; time-bound disposal directed. [Paras 13–16]

Revision allowed. (E-14)

Case Law Cited

***Sukhdev Singh v. Sukhbir Kaur,* 2025 SCC OnLine SC 299 — relied on.**

List of Acts / Statutes

Code of Criminal Procedure, 1973; Hindu Marriage Act, 1955

List of Keywords

Maintenance; Section 125 Cr.P.C.; Section 125(4) bar; Voidable marriage; Section 12(1)(c) HMA; No decree of nullity; Living separately without cause; Perversity; Remand; Social justice.

Case Arising From

Order dated **02.11.2017** passed by the Principal Judge, Family Court, Chandauli in **Maintenance Petition No. 332 of 2015** (Sweta Jaiswal and another v. Santosh Jaiswal) under Section 125 Cr.P.C.**.**

Appearance for Parties

For the Revisionist: Sri Bipin Kumar, Sri Mohd. Naushad Siddiqui.
For the Respondent: Learned Government Advocate**.**

(Delivered by Hon'ble Rajiv Lochan Shukla, J.)

1. Heard Learned counsel for the revisionist, learned A.G.A. for the State-respondents and perused the material brought on the record.

2. The present criminal revision has been preferred against the impugned order dated 2.11.2017 passed by the Principal Judge, Family Court, Chandauli in Maintenance Petition No.332 of 2015 *(Sweta Jaiswal and another Vs. Santosh Jaiswal*) under Section 125 Cr.P.C., whereby the claim for maintenance by the revisionist Sweta Jaiswal has been refused. However, the claim for maintenance for her minor daughter has been allowed to the tune of Rs. 2,000/- per month.

3. From the perusal of the records, it transpires that the notices were issued by this Court, which were duly served upon the opposite party No.2 on 25.1.2018, now even thereafter despite passing of several peremptory orders, no one has put in appearance on behalf of the opposite party No.2. Lastly, on 21.05.2025, the Court was constrained to pass the following order:-

"1. List revised. None responded for the opposite party no. 2 to press this revision.

2. At the request of learned A.G.A. for the State, case is adjourned for the day.

3. Matter pertains to the year 2017.

4. List on 08.07.2025 for final hearing.

5. It is made clear that no further adjournment will be granted to the opposite parties."

4. Learned counsel for the revisionist has apprised the Court of the previous order dated 4.7.2022, wherein, this Court had passed an order for peremptory listing of the case. The aforesaid order dated 4.7.2022 is reproduced hereinunder:-

"Record of the case indicates that as per the report of the CJM, Bhadohi, Gyanpur dated 25.01.2018 notices were duly served upon opposite party no.2 but neither he has engaged any counsel nor any counter affidavit has been filed so far.

This revision is being filed on behalf of Sweta Jaiswal wife of Santosh Jaiswal, opposite party no.2, who claims for maintenance which was rejected in the light of provisions under Section 125(4) Cr.P.C.

Let written information may be given to Santosh Jaiswal son of Ramraj Jaiswal at the address given in memo of revision itself connecting the opposite party no.2 that the matter would be heard and decided ultimately on 1st August 2022 with or without appearance of opposite party no.2.

A last opportunity is afforded to him to put his appearance through counsel to contest the present criminal revision.

List this matter peremptorily on 01.08.2022."

5. Learned counsel for the revisionist then contends that perusal of the order-sheet and the orders quoted above would indicate that opposite party No.2 despite service of notice is not interested to contest the case and has neither engaged any counsel nor has filed any counter affidavit to the claims raised in the criminal revision and the affidavit accompanying thereto.

6. Learned counsel for the revisionist has argued that the sole ground, refusing grant of maintenance to the revisionist, as is reflected from the impugned order, is the provisions contained in Section 125(4) of the Code of Criminal Procedure, whereby, the learned Principal Judge while going through the statements of the P.W.-1(revisionist) and the opposite party No.2 has opined that the reason for the revisionist not staying with the opposite party No.2 on account of the fact that he had concealed the factum of his previous marriage and divorce. Learned counsel for the revisionist further argued that this finding recorded by the learned Principal Judge is absolutely perverse and no such finding could have been recorded from the statement of the revisionist from the pleadings that have been filed.

7. This Court has had an occasion to go through the application under Section 125 Cr.P.C. moved on behalf of the revisionist and also her statement recorded before the Competent Court, which has been annexed as Annexure Nos.1 & 2 to

the affidavit accompanying the criminal revision. Perusal of the same indicates that the revisionist has leveled allegations of cruelty in respect to demand of dowry and a passing reference has been made in her statement and her pleadings highlighting the factum of previous marriage and divorce of the opposite party No.2 which has been concealed from her. The learned Court below taking this passing remark has recorded a finding that the revisionist was living separately from her husband without reasonable cause whereas the stand taken by the opposite party No.2 was that the revisionist's behavior was too atrocious and that she used to behave in a cruel manner with the family members of the opposite party No.2

8. The Principal Judge, Family Court arriving at the conclusion, on the basis of the evidence led by the parties, cannot draw an inference, which is alien to the contentions of the parties. A mere passing reference to the previous marriage and divorce being concealed from the revisionist could not lead to any conclusion that the revisionist was willfully avoiding her duties as a wife and was living separately from her husband without reasonable cause.

9. While recording the findings as to Section 125(4) Cr.P.C., the learned Principal Judge has also referred to Section 12 of The Hindu Marriage Act, *1955 (hereinafter referred to as the "Act, 1955"),* specifically the Section 12(1)(c) of the Act, 1955 which provides for voidable marriages and has recorded that if a marriage has been effected by concealment of material fact or that the consent for marriage has been obtained by playing fraud, then a party can seek the marriage to be declared as a nullity and has further recorded that in such circumstances, where the marriage may be annulled, the wife would not be entitled for any maintenance. Section 12(1)(c) of the Act, 1955 is being reproduced hereinbelow:-

12. Voidable marriages. - (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a) .....

(b) .....

(c) that the consent of the petitioner, or where the consent of the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of ceremony or as to any material fact or circumstance concerning the respondent]; or*

(d) ....."

10. Even though consideration of Section 12(1)(c) of the Act, 1955 is not required to be gone into at this stage, as no such exercise has been undertaken by the revisionist for getting the marriage annulled. However, at the same time, it is necessary to comment upon the error committed by the learned Principal Judge in recording that merely because a marriage could be annulled, the wife loses her right to claim maintenance. Unless and until, a marriage, which is voidable, has been declared a nullity by a decree, the status of the revisionist as the legally wedded wife

of the opposite party No.2 persists and all the rights that flow from the same continuous. Merely on a hypothetical consideration that the said marriage could be annulled as there was a concealment of the previous marriage or divorce from the side of the respondent No.2 which may or may not be considered to be in violation of Section 12(1)(c) of the Act, 1955, however, once there was no decree of nullity nor there being any evidence that such a decree has been sought by the revisionist against the respondent No.2, no finding on Section 125(4) Cr.P.C. could be recorded. Relying upon the above-mentioned provision and declaring that the wife loses her right to claim maintenance is perverse and patently illegal being misdirected and uncalled for.

11. The Hon'ble Supreme Court in the case of **Sukhdev Singh Vs. Sukhbir Kaur** reported in **2025 SCC OnLine SC 299,** while answering questions referred has held as follows:-

26. Even if, prima facie, the matrimonial court finds the marriage between the parties is void or voidable, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned above are satisfied. The grant of relief under Section 24 is discretionary as the Section uses the word ?may?. While deciding the prayer for interim relief under Section 24, the Court will always consider the conduct of the party seeking the relief. It provides for issuing a direction to pay a reasonable amount.

28. Accordingly, we answer the questions as follows:

a. A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and

b. Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary."

12. Once the provision which the learned Principal Judge refers to under the Act, 1955 itself does not dis-entitle the claim for maintenance then the relief under the general provision under Section 125 Cr.P.C. cannot be denied solely on the consideration that marriage would be voidable. Here, no proceedings have been been drawn to the notice of the Court where either of the parties had sought a decree for declaration of the marriage as a nullity as such, once marriage persists, the status of the revisionist as the legally wedded wife of the opposite party No.2 continues and not subject to challenge. The marriage itself has not been declared a nullity and in the absence of the same, denial of relief of maintenance on the incorrect assumption of the applicability of Section 12(1)(c) of the Act, 1955 was clearly illegal and perverse.

13. In these circumstances, the finding recorded by the learned trial Court that the revisionist was dis-entitled for the maintenance as she was covered by the bar to grant of maintenance under 125(4) Cr.P.C. is patently illegal and perverse and is liable to be set aside. Consequently, the matter is remanded back to the learned Principal Judge, Family Court, Chandauli for passing a fresh order in the light of the observations made herein before only with respect to the claim of the maintenance of the revisionist without disturbing the maintenance, awarded to the minor daughter.

14. Let a copy of this order be communicated to the learned Principal Judge, Family Court, Chandauli and the learned counsel for the revisionist may also file a copy of this order before him within a period of one month from today.

15. Learned Principal Judge, Family Court, Chandauli shall on receipt of this order and after due notice to the parties, proceed to decide the case within a further period of three months. 16. With the above directions, the instant criminal revision stands ***allowed.***

(2025) 9 ILRA 1311
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.09.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

First Appeal From Order No. 279 of 2011

Vivek Singhal ...Appellant
Versus
Smt. Vijaya Rani Singhal ...Respondent

Counsel for the Appellant:
K.M. Garg

Counsel for the Respondent:
Manoj Kumar Tiwari

ISSUE FOR CONSIDERATION

Whether the probate petition filed by the appellant for the Will is maintainable under Section 57(c) of the Indian Succession Act, 1925, and whether the Additional District Judge erred in rejecting the petition as non-maintainable.

HEADNOTES

Civil Law – Indian Succession Act, 1925 - Section 57, 57(a), 57(b), 57(c), 213 (2) - First Appeal from Order – challenging the rejection of probate case – and for remanded back the matter before court below to decide the probate case afresh – Will – executed in favour of the Appellant regarding property in Rajasthan – appellant sought probate of Will field Probate Case - respondent filed no objection - The Additional District Judge, dismissed the probate case, holding that the Will fell under Section 57(c) of the Act, 1925 and thus probate could not be granted – hence the instant Appeal - appellant arguing misinterpretation of Section 57 and relying on several precedents to show that probate should not be refused when the Will is duly proved, especially as Section 213(2) permits Hindus to establish rights under a Will without probate – the core issue as whether the lower court erred in denying probate despite the Will being validly executed and uncontested - the Court, after considering arguments and precedents, held that the Will was valid and that the Additional District Judge erred in rejecting the probate petition on the basis of Section 57 of the Indian Succession Act, 1925 - Referring to rulings in *Triloki Nath*, *Kanta Yadav*, and *Clarence Pais*, it was clarified that probate petitions for Wills under Section 57(c) are maintainable and optional, and cannot be dismissed as non-maintainable – hence, the impugned order is set aside, Probate Case is restored to its original number, and the lower court is directed to decide the matter on its merits expeditiously - First Appeal From Order is accordingly, allowed. (Para – 14, 15, 16)

Appeal allowed. (E-11)

CASE LAW CITED

1. Surya Prakash Agarwal vs. Ajay Kumar Agarwal (2008 (3) AWC 3004)
2. Smt. Bimla Gaindhar vs. Usha Gaindher (AIR 2004 Allahabad 329)
3. Smt. Usha Mohan vs. Property of late Sri Mehr Chand Mohan (Testamentary Case No.1 of 1993, 13.8.2018)
4. Tiloki Nath vs. Kanhiya Lal (AIR 1978 Allahabad 297)
5. Nirmala Devi vs. Arun Kumar Gupta ((2005) 12 SCC 505)
6. Balbir Singh Wasu vs. Lakhbir Singh (2005 (12) SCC 503)
7. Ravinder Nath Agarwal vs. Yogender Nath Agarwal ((2021) 15 SCC 282)
8. Kanta Yadav vs. Om Prakash Yadav ((2020) 14 SCC 102)
9. Behari Lal Ram Charan vs. Karam Chand Sahni (1966 SCC Online Punj 226)
10. Dr. Sunil Kumar vs. Chaitanya Prakash (2014 (10) ADJ 642)
11. Clarence Pais vs. Union of India (AIR 2001 SC 1151)
12. Binapani Kar Chowdhury vs. Satyabrata Basu (2006 (3) AWC 3121 SC)

LIST OF ACTS

Indian Succession Act, 1925.

LIST OF KEYWORDS

Probate petition - Will deed – Maintainability - Hindu Will - Ghaziabad jurisdiction - Probate optional - Appeal from order.

CASE ARISING FROM

Probate Case No. 50 of 2007 filed before Additional District Judge, Court No.5, Ghaziabad. - Impugned order dated 26.11.2010 rejecting probate petition.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri K M Garg.
Counsel for Respondent(s): Shri Manoj Kumar Tiwari.

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

1. Heard Mr. K.M. Garg, learned counsel for the appellant and Mr. Manoj Kumar Tiwari, learned counsel for the respondent.

2. Brief facts of the case are that the appellant has filed probate case in the Court of District Judge, Ghaziabad seeking probate of Will deed dated 11.12.1974 executed at District- Ghaziabad by one Kulveer Singh son of Raghunath Singh in favour of appellant/ Vivek Singhal in respect to immovable property situated at Village- Balkund, Tahsil- Ladpur, District- Kota, State-Rjasthan. The aforementioned case was registered as probate case no.50 of 2007. In the aforementioned probate case specific and general citation has been issued as well as published in Hindi Daily Aaj. The appellant has filed an application seeking the valuation of the property and proforma of schedule III. The appellant has also filed an affidavit in his examination in Chief. Respondent has filed her no objection and her own affidavit stating that she has no objection for granting probate in favour of the appellant. In the aforementioned probate case one Rajkumar Samsun, Notary Advocate, Ghaziabad has filed his own affidavit proving execution and attestation of Will. One Vandana, sister of the appellant has filed an amendment application seeking her right in the property in dispute. The amendment application has been rejected by the Court vide order dated 26.11.2007 on the ground that Will has been executed in favour of appellant only, as such, applicant of amendment application is neither necessary nor proper party in the probate case. Additional District Judge, Court No.5, Ghaziabad vide order dated 26.11.2010 rejected the probate case merely on the ground that Will is not covered by the Clause (a) & (b) of Section 57 of the Indian Succession Act, 1925 but it is covered by the Clause (c) of Section 57 of Indian Succession Act, 1925, as such,

probate could not be granted. Hence this first appeal from order on behalf of the appellant for the following relief:

" The relief sought by means of the present First Appeal From Order is that this Hon'ble Court may graciously be pleased to allow the present First Appeal From Order in toto, set aside the impugned order dated 26.11.2010 passed by the learned Additional District Judge, Court No.5, Ghaziabad in Probate Case No.50 of 2007 and Probate Case be remanded back to the learned Court below to decide the same on merits or to allow the Probate Case No.50 of 2007 with cost and / or pass such other further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. "

3. This Court on 3.2.2017, issued notice to respondent.

4. In pursuance of the order of this Court dated 3.2.2017, respondent has put in appearance through counsel.

5. Learned counsel for the appellant submitted that the learned Additional District Judge has committed manifest error of law in misreading and misinterpreting the provisions of Section 57 of the Indian Succession Act, 1925. He further submitted that the provisions contained under Section 57 of Indian Succession Act, 1925 does not prohibit to grant probate of Will. He further submitted that respondent has filed an affidavit to the effect that she has no objection in granting probate in favour of applicant / appellant, as such, learned Additional District Judge was under obligation to grant probate to the Will-deed dated 11.12.1974 executed at Ghaziabad itself. He further submitted that according to the provisions contained under Section 213 (2) read with Section 57 of Indian Succession Act, 1925, it is fully demonstrated that so long as particular Will executed by Hindu even if is not covered by the clause (a) and clause (b) of Section 57 of Indian Succession Act, 1925 can establish his right as legatee in any Court of law without obtaining probate. He further submitted that the Court cannot refuse to grant probate when the Will has been duly proved and last Will of testator. He further submitted that the impugned order is against the law, facts and evidence on record, as such, the same is liable to be set aside. He placed reliance upon the following judgements of Apex Court as well as this Court:

i. 2008 (3) AWC 3004, Surya Prakash Agarwal vs. Ajay Kumar Agarwal and others.

ii. AIR 2004 ALLAHABAD 329, Smt. Bimla Gaindhar vs. Usha Gaindher and another.

iii. Testamentary Case No.1 of 1993 dated 13.8.2018, Smt. Usha Mohan vs. Property of late Sri Mehr Chand Mohan Saraswati Bhawan, Chandganj Extension.

iv. AIR 1978 ALLAHABAD 297, Tiloki Nath vs. Kanhiya Lal and others.

v. (2005) 12 SCC 505, Nirmala Devi vs. Arun Kumar Gupta and others.

vi. 2005 (12) SCC 503, Balbir Singh Wasu vs. Lakhbir Singh.

vii. (2021) 15 SCC 282, Ravinder Nath Agarwal vs. Yogender Nath Agarwal and others.

viii. (2020) 14 SCC 102, Kanta Yadav vs. Om Prakash Yadav and others.

ix. 1966 SCC Online Punj 226, Behari Lal Ram Charan vs. Karam Chand Sahni and others.

x. 2014 (10) ADJ 642, Dr. Sunil Kumar vs. Chaitanya Prakash and others.

xi. AIR 2001 SC 1151, Clarence Pais and others vs. Union of India.

xii. 2006 (3) AWC 3121 (SC), Binapani Kar Chowdhury vs. Satyabrata Basu and another.

6. On the other hand, Mr. Manoj Kumar Tiwari, learned counsel for the respondent submitted that the respondent has no objection to the prayer made in the probate case for grant of probate on the basis of Will-deed dated 11.12.1974 executed by Kulveer Singh in favour of the appellant.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that the Will-deed has been executed on 11.12.1974 at the Ghaziabad by one Kulveer Singh in favour of appellant- Vivek Singhal. There is also no dispute about the fact that Additional District Judge under the impugned order dated 26.11.2010 has held that the probate cannot be issued in view of the provisions contained under Section 57 (a) (b) (c) of Indian Succession Act, 1925.

9. In order to appreciate the controversy involved in the matter, perusal of Section 57 (a) (b) (c) will be relevant, which are as under:

"Section 57. Application of certain provisions of Part to a class of wills made by Hindus, etc.-The provisions of this Part which are set out in Schedule Ill shall, subject to the restrictions and modifications specified therein, apply-

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b) :

Provided that marriage shall not revoke any such Will or codicil."

10. Perusal of Section 213 of Indian Succession Act, 1925 will be also relevant, which is as under:

"Section 213. No right as executor or legatee when established.?(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans or Indian Christians], and shall only apply?

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of classes specified in clauses (a) and (b) of Section 57, and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962, where such wills are made within the local limits of the ordinary 4[original] civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits."

11. In order to appreciate the controversy involved in the matter, perusal of paragraph nos.3 & 4 of the judgement rendered by Allahabad High Court in the case of ***Triloki Nath (supra)*** will be relevant, which are as under:

"3. I have heard the learned counsel for the parties and in my opinion, the contention raised by the learned counsel is wholly misconceived. Section 264(1) of the Act makes it clear that the District Judge has jurisdiction in granting and revoking probates and letters of administration in all cases within his district. Section 264(2) of the Act makes it clear that except in cases to which section 57 of the Act applies, no court shall (apart from local limits of the towns of Calcutta, Madras and Bombay) receive applications or probate or letters of administration until the State Government has by notification in the official Gazette authorised it so to do. It is evident that where section 57 applies, notification is not necessary. Section 57 of the Act has three sub-clauses. Sub-clause (c) is relevant. Section 57 read with sub-clause (c) reads as follows:

"Section 57(c): The provisions of this part which are set out in Schedule III shall, subject to the ??? and notifications specified therein, apply?

(c) to all wills and codicils made by any Hindu, Budhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b)."

4. It is apparent from a perusal of the above that where a will has been made by a Hindu, Budhist, Sikh or Jaina on or after the 1st day of January, 1927, and to which sub-clauses (a) and (b) do not apply, the provisions of part VI of the Act would apply subject to the restrictions and modifications specified in Schedule III. Schedule III lays down five restrictions and modifications. There is no dispute that none of these five clauses have any application in the present case. Admittedly, in the present case, the date of the execution of the will is after the 1st January, 1927, and the deceased was a Hindu. Consequently the provisions of section 57 are attracted and in view of the language of section 264(2) of the Act, there was no necessity of a notification in the official Gazette empowering the District Judge to entertain petitions for probates and letters of administration and grant the same. It therefore follows that the District Judge has jurisdiction to entertain petitions and grant letters of administration."

12. Perusal of Paragraph nos.6 to 12 of the judgement passed in ***Kanta Yadav (supra)*** will be relevant, which are as under:

"6. The said provisions have been examined and come up for consideration time and again before the Punjab and

Haryana High Court and the Delhi High Court. In Ram Chand v. Sardara Singh [Ram Chand v. Sardara Singh, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] , the Punjab High Court held as under : (SCC OnLine P&H : AIR p. 388, paras 5-7)

"5. The clear effect of these provisions appears to be that the provisions of Section 213(1) requiring probate do not apply to wills made outside Bengal and the local original jurisdictional limits of the High Courts at Madras and Bombay except where such wills relate to immovable property situated within those territories.

6. There remains to be considered the decision [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] of Shamsher Bahadur, J., in the case mentioned above, which is apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai [Ganshamdoss Narayandoss v. Gulab Bi Bai, 1927 SCC OnLine Mad 158 : ILR (1927) 50 Mad 927] . I find, however, on perusing this judgment that what has been held is that a defendant resisting a claim made by the plaintiff as heir-at-law cannot rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will is not probated and no letters of administration with the will annexed have been granted. This is clearly in accordance with the provisions of Sections 213 and 57(a) of the Act, and the only point on which the matter was referred to the Full Bench was whether a will could be set up in defence in a suit without probate.

7. As I have said the clear reading of the provisions of the Act leave no doubt whatever that no probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and not relating to property situated in the territories mentioned in Section 57(a). I accordingly accept the revision petition and set aside the order of the lower court requiring the petitioner to obtain probate. The matter may now be disposed of by the lower court, where the parties have been directed to appear on 4-12-1961. The parties will bear their own costs in this Court."

7. The said view was affirmed by the Division Bench of the Punjab and Haryana High Court in Behari Lal Ram Charan v. Karam Chand Sahni [Behari Lal Ram Charan v. Karam Chand Sahni, 1966 SCC OnLine P&H 226 : AIR 1968 P&H 108] : (SCC OnLine P&H)

"3. From a bare perusal of these two sections it is apparent that the objection of Defendant 1 on the preliminary issue raised by him in the trial court was without any substance. Clause (a) of Section 57 read with sub-section (2) of Section 213, it would appear, applies to those cases where the property and parties are situate in the territories of Bengal, Madras and Bombay, while clause (b) applies to those cases where the parties are not residing in those territories but the property involved is situate within those territories. Clause (c) of Section 57, however, is not relevant for the present purposes. Therefore, where both the person and property of any Hindu, Buddhist, Sikh or Jaina, are outside the territories mentioned above, the rigour of Section 213, sub-section (1), is not attracted. Reference was made by the learned referring Judge to a decision of the Supreme Court in Hem Nolini Judah v. Isolyne Sarojbashini Bose

[Hem Nolini Judah v. Isolyne Sarojbashini Bose, AIR 1962 SC 1471] , but the parties in that case were Christians (to whom it is agreed Section 57 does not apply) and their Lordships only considered the implications of sub-section (1) of Section 213 of the Act and not of sub-section (2) of that section read with Section 57 clauses (a) and (b). The learned Single Judge probably felt the difficulty because of the view taken by Shamsher Bahadur, J. In Kesar Singh v. Tej Kaur [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] , but that judgment was considered by Falshaw, J. (as he then was) in Ram Chand v. Sardara Singh [Ram Chand v. Sardara Singh, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] , who differed from the view taken by Shamsher Bahadur, J., in the abovementioned case, holding that no probate was necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and a succession certificate could be granted on the ground of a will without obtaining probate. While referring to the decision of Shamsher Bahadur, J., in Kesar Singh case [Kesar Singh v. Tej Kaur, 1961 SCC OnLine P&H 71 : PLR (1961) 63 P&H 473] , Falshaw, J., observed that the view taken by Shamsher Bahadur, J., was apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai [Ganshamdoss Narayandoss v. Gulab Bi Bai, 1927 SCC OnLine Mad 158 : ILR (1927) 50 Mad 927] where it was held that a defendant resisting a claim made by the plaintiff as heir-at-law could not rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will was not probated and no letters of administration with the will annexed had been granted. The Madras case was clearly in accordance with Section 213 read with Section 57 of the Act. We agree with the view taken by Falshaw, J., in Ram Chand case [Ram Chand v. Sardara Singh, 1961 SCC OnLine P&H 233 : AIR 1962 P&H 382 : PLR (1962) 64 P&H 265] . A similar view was expressed by Jai Lal, J., in Sohan Singh v. Bhag Singh [Sohan Singh v. Bhag Singh, 1934 SCC OnLine Lah 183 : AIR 1934 Lah 599] , and by me in Radhe Lal v. Ladli Parshad [Radhe Lal v. Ladli Parshad, CR No. 340-D of 1965, order dated 24-8-1965 (P&H)] . Even a cursory glance at Sections 213 and 57 of the Act leaves no room for doubt that the view taken by Shamsher Bahadur, J., in the case mentioned above was erroneous. It appears that the case of Sohan Singh v. Bhag Singh [Sohan Singh v. Bhag Singh, 1934 SCC OnLine Lah 183 : AIR 1934 Lah 599] , referred to above, was not brought to his notice.?

8. In Winifred Nora Theophilus v. Lila Deane [Winifred Nora Theophilus v. Lila Deane, 2001 SCC OnLine Del 644 : AIR 2002 Del 6] , a Single Bench of the Delhi High Court held as under : (SCC OnLine Del para 11)

"11. On interpretation of Section 213 read with Sections 57(a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to the Lt. Governor of Bengal or within the local limits of ordinary, original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to immovable property within the aforesaid territories that embargo contained in Section 213 shall apply. From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo

contained in Section 213 shall not apply. This is what the various judgments cited by the learned counsel for the defendants decide. Therefore, there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immovable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required."

9. The Division Bench of the Delhi High Court in Rajan Suri v. State [Rajan Suri v. State, 2005 SCC OnLine Del 1290 : AIR 2006 Del 148] referred to the Division Bench judgment in Behari Lal [Behari Lal Ram Charan v. Karam Chand Sahni, 1966 SCC OnLine P&H 226 : AIR 1968 P&H 108] case and certain other Single Bench judgments of the Delhi High Court to conclude as under : (Rajan Suri case [Rajan Suri v. State, 2005 SCC OnLine Del 1290 : AIR 2006 Del 148] , SCC OnLine Del para 33)

"33. The result of the aforesaid is that complete line of judgments referred by the learned counsel for the petitioner in support of the submission that probate is mandatory would have no application to the facts of the present case and thus findings arrived at in the collateral proceedings in the suit to which the petitioners were parties would bind the petitioners."

10. The learned counsel for the respondents also referred to the Supreme Court judgment in Clarence Pais v. Union of India [Clarence Pais v. Union of India, (2001) 4 SCC 325] wherein, validity of Section 213 of the Act was challenged as unconstitutional and discriminatory against the Christians. This Court held as under : (SCC p. 332, para 6)

"6...? A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.'

11. The statutory provisions are clear that the Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay ? [clause (a) of Section 57 of the Ac]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned, clause (b) of Section 57. Clause (c) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act

12. In view thereof, the wills and codicils in respect of the persons who are subject to the Lieutenant Governor of Bengal or who are within the local limits of ordinary original civil jurisdiction of the High Court of Madras or Bombay and in respect of the immovable properties situated in the above three areas. Such is the view taken in the number of judgments referred to above in the States of Punjab and Haryana as well as in Delhi as also by this Court in Clarence Pais [Clarence Pais v. Union of India, (2001) 4 SCC 325] ."

13. Perusal of Paragraph nos.Paragraph nos.5 to 8 of the judgement rendered in the case of ***Clarence Pais (supra)*** will be relevant, which are as under:

"5. On several representations having been made in this regard by the Christian community in India amendment was sought to be introduced by way of a Bill to amend Section 213 of the Act to bring Christians on a par with other communities who are not required to obtain probate. The grievance of the petitioners in these cases, it is stated, is well brought out in the ?Statement of Objects and Reasons? dated 13-5-1942 (sic) in respect of the proposed amendment of Section 213 which reads as under:

"Prior to 1901, Indian Christians laboured under a serious grievance, namely, that they were compelled to obtain probate of wills and letters of administration with liability to pay death duties on the death of every owner of property under the Indian Succession Act 10 of 1865, while Hindus and Muslims were exempt from the provisions of the Act. They have since been partially relieved by being placed practically on the same footing as their non-Christian countrymen in cases of intestacy under the Indian Christian Estates Administration Act 7 of 1901; but where the deceased has left a will, they are still bound to obtain probate and pay probate duty as required by Section 213 of the Indian Succession Act 39 of 1925, a section which does not apply to will of Hindus, Buddhists, Sikhs or Jains except where such wills are of the class specified in clauses (a) and (b) of Section 57 and to all wills of Muhammadans.

The necessity of making wills has been imposed upon Indian Christians by the provisions of the Indian Succession Act as to intestate succession being made applicable to them, which are far in advance of their usages and are derived from English law. It is felt as a serious hardship that in such circumstances Indian Christians should be compelled to obtain probate and should be made liable to pay death duties while their non-Christian countrymen to whom wills are a luxury are exempt. From this injustice they should be relieved by placing Indian Christians on the same footing as Hindus and Muhammadans in Sections 213 and 370 of the Act."

Sections 57 and 213 of the Act provide as follows:

"57. Application of certain provisions of Part to a class of wills made by Hindus, etc.?The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply"

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of

Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil."

"213. Right as executor or legatee when established.?(1) No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply"

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of Section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962, where such wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, insofar as they relate to immovable property situate within those limits."

The Hindu Wills Act, 1870 is the forerunner of Section 57 of the Act. This section without the proviso together with Schedule III except Article (5) is Section 2 of the Hindu Wills Act, 1870 as amended by Section 154 of the Probate and Administration Act, 1881. The proviso is proviso to Section 3 of the Hindu Wills Act. Thus, the scheme of the said enactment is retained in Section 57 of the Act.

6. The scope of Section 213(1) of the Act is that it prohibits recognition of rights as an executor or legatee under a will without production of a probate and sets down a rule of evidence and forms really a part of procedural requirement of the law of forum. Section 213(2) of the Act indicates that its applicability is limited to cases of persons mentioned therein. Certain aspects will have to be borne in mind to understand the exact scope of this section. The bar that is imposed by this section is only in respect of the establishment of the right as an executor or legatee and not in respect of the establishment of the right in any other capacity. The section does not prohibit the will being looked into for purposes other than those mentioned in the section. The bar to the establishment of the right is only for its establishment in a court of justice and not its being referred to in other proceedings before administrative or other tribunals. The section is a bar to everyone claiming under a will, whether as a plaintiff or defendant, if no probate or letters of administration are granted. The effect of Section 213(2) of the Act is that the requirement of probate or other

representation mentioned in sub-section (1) for the purpose of establishing the right as an executor or legatee in a court is made inapplicable in case of a will made by Muhammadans and in the case of wills coming under Section 57(c) of the Act. Section 57(c) of the Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of January, 1927 which does not relate to immovable property situate within the territory formerly subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary civil jurisdiction of the High Courts of Judicature at Madras and Bombay, or in respect of property within those territories. No probate is necessary in the case of wills by Muhammadans. Now by the Indian Succession (Amendment) Act, 1962, the section has been made applicable to wills made by Parsis dying after the commencement of the 1962 Act. A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.

7. We have shown above that it is applicable to Parsis after the amendment of the Act in 1962 and to Hindus who reside within the territories which on 1-9-1870 were subject to the Lt. Governor of Bengal or to areas covered by original jurisdiction of the High Courts of Bombay and Madras and to all wills made outside those territories and limits so far as they relate to immovable property situate within those territories and limits. If that is so, it cannot be said that the section is exclusively applicable only to Christians and, therefore, it is discriminatory. The whole foundation of the case is thus lost. The differences are not based on any religion but for historical reasons that in the British Empire in India, probate was required to prove the right of a legatee or an executor but not in Part ?B? or ?C? States. That position has continued even after the Constitution has come into force. Historical reasons may justify differential treatment of separate geographical regions provided it bears a reasonable and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long-drawn process. Undoubtedly, the States and Union should be alive to this problem. Only on the basis that some differences arise in one or the other States in regard to testamentary succession, the law does not become discriminatory so as to be invalid. Such differences are bound to arise in a federal set-up.

8. The learned counsel for the petitioners relied on the decisions in B. Venkataramana v. State of Madras [1951 SCC 359 : AIR 1951 SC 229] , Sheokaransingh v. Daulatram [AIR 1955 Raj 201 : 1956 Raj LW 81 (FB)] , State of Rajasthan v. Thakur Pratap Singh [AIR 1960 SC 1208] , Hem Nolini Judah v. Isolyne Sarojbashini Bose [AIR 1962 SC 1471 : 1962 Supp (3) SCR 294] , Mary Sonia Zachariah v. Union of India [(1995) 1 KLT 644 (FB)] , Ahmedabad Women

Action Group (AWAG) v. Union of India [(1997) 3 SCC 573] and Preman v. Union of India [(1998) 2 KLT 1004] . However, in the light of the above conclusion, it is unnecessary to refer to those decisions, though some of them may have a bearing in analysing and understanding the scope of the provisions, which are made applicable exclusively to Christians as it happened in the case of Section 118 of the Act or in the case of the Indian Divorce Act. Therefore, we have not adverted to anyone of these provisions. If Christians alone had been discriminated against by treating them as a separate class, we think the argument could have been understood and merited consideration."

14. Apex Court as well as this Court in the aforementioned judgements rendered in ***Trilokin Nath (supra), Kanta Yadav (supra) & Clarence Pais (supra)*** as quoted above has clearly held that probate petition is maintainable without notification and rigour of Section 213 will not be applicable with regard to Wills falling under Section 57 (c). It has also been held that probate petition is optional and the same cannot be rejected as not maintainable.

15. Considering the ratio of law laid down by Hon'ble Apex Court and this Court, the judgement / order dated 26.11.2010 passed by learned Additional District Judge, Court No.5, Ghaziabad cannot be sustained in the eye of law.

16. Considering the entire facts and circumstances of the case, the judgement / order dated 26.11.2010 passed by learned Additional District Judge, Court No.5, Ghaziabad is liable to be set aside and the same is hereby set aside. The Probate Case No.50 of 2007 is restored to its original number and the Court shall decide the aforementioned Probate Case No.50 of 2007 in accordance with law on merit expeditiously after affording proper opportunity of hearing to the parties.

17. The instant First Appeal From Order is ***allowed*** to the extant indicated above.

18. No order as to costs.
